

105th CONGRESS }
1st Session

COMMITTEE PRINT

{ SERIAL NO.
105-D

LEGISLATIVE STUDY AND INVESTIGATIVE STAFF REPORT ON ABUSE OF
DISCRETION IN THE CREATION OF THE GRAND STAIRCASE-ESCALANTE
NATIONAL MONUMENT UNDER THE ANTIQUITIES ACT

**BEHIND CLOSED DOORS: THE ABUSE OF TRUST
AND DISCRETION IN THE ESTABLISHMENT OF
THE GRAND STAIRCASE-ESCALANTE NATIONAL
MONUMENT**

Majority staff of the Committee on Resources, Subcommittee on National
Parks and Public Lands submits the following

STAFF REPORT
OF THE
COMMITTEE ON RESOURCES

ONE HUNDRED FIFTH CONGRESS
FIRST SESSION



NOVEMBER 7, 1997

This report has not been officially adopted by the Committee on Resources
and may not therefore necessarily reflect the views of its members.

U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1998

47-118 CC

COMMITTEE ON RESOURCES

DON YOUNG, Alaska, *Chairman*

W.J. (BILLY) TAUZIN, Louisiana	GEORGE MILLER, California
JAMES V. HANSEN, Utah	EDWARD J. MARKEY, Massachusetts
JIM SAXTON, New Jersey	NICK J. RAHALL II, West Virginia
ELTON GALLEGLY, California	BRUCE F. VENTO, Minnesota
JOHN J. DUNCAN, Jr., Tennessee	DALE E. KILDEE, Michigan
JOEL HEFLEY, Colorado	PETER A. DEFAZIO, Oregon
JOHN T. DOOLITTLE, California	ENI F.H. FALEOMAVAEGA, American Samoa
WAYNE T. GILCHREST, Maryland	NEIL ABERCROMBIE, Hawaii
KEN CALVERT, California	SOLOMON P. ORTIZ, Texas
RICHARD W. POMBO, California	OWEN B. PICKETT, Virginia
BARBARA CUBIN, Wyoming	FRANK PALLONE, Jr., New Jersey
HELEN CHENOWETH, Idaho	CALVIN M. DOOLEY, California
LINDA SMITH, Washington	CARLOS A. ROMERO-BARCELO, Puerto Rico
GEORGE P. RADANOVICH, California	MAURICE D. HINCHEY, New York
WALTER B. JONES, Jr., North Carolina	ROBERT A. UNDERWOOD, Guam
WILLIAM M. (MAC) THORNBERRY, Texas	SAM FARR, California
JOHN SHADEGG, Arizona	PATRICK J. KENNEDY, Rhode Island
JOHN E. ENSIGN, Nevada	ADAM SMITH, Washington
ROBERT F. SMITH, Oregon	WILLIAM D. DELAHUNT, Massachusetts
CHRIS CANNON, Utah	CHRIS JOHN, Louisiana
KEVIN BRADY, Texas	DONNA CHRISTIAN-GREEN, Virgin Islands
JOHN PETERSON, Pennsylvania	RON KIND, Wisconsin
RICK HILL, Montana	LLOYD DOGGETT, Texas
BOB SCHAFFER, Colorado	
JIM GIBBONS, Nevada	
MICHAEL D. CRAPO, Idaho	

LLOYD A. JONES, *Chief of Staff*

ELIZABETH MEGGINSON, *Chief Counsel*

CHRISTINE KENNEDY, *Chief Clerk/Administrator*

JOHN LAWRENCE, *Democratic Staff Director*

CONTENTS

	Page
Introduction: Committee Review Of The Designation of the Grand Staircase- Escalante National Monument	1
The Law: Antiquities Act Monument Designations	2
Executive Summary of Findings: Monumental Decisions Behind Closed Doors It's Politics, Stupid—Not The Environment	3
The Ends Justify The Means: NEPA, A Law of Convenience For The Clinton- Gore Campaign	4
Campaign Style "Event" For A Campaign-Motivated Decision That Violates The Intent of the Antiquities Act	6
Highlights of Select Utah Monument Records: A Glimpse Of The Abuse Of Trust And Discretion	10
	12

Introduction: Committee Review Of The Designation of the Grand Staircase-Escalante National Monument

On September 18, 1996, President Clinton established, by Presidential Proclamation No. 6920, the 1.7-million-acre Grand Staircase-Escalante National Monument ("Utah Monument") in Utah pursuant to Section 2 of the Act of June 8, 1906 ("Antiquities Act"). The Committee on Resources has jurisdiction over the Antiquities Act and the creation of the Monument, jurisdiction that is delegated under Rule 6(a) of the Rules For the Committee on Resources ("Committee Rules") to the Subcommittee on National Parks and Public Lands.

The Subcommittee has a continuing responsibility under Rule 6(d) of the Committee Rules to monitor and evaluate administration of laws within its jurisdiction. In relevant part, that rule states:

... Each Subcommittee shall review and study, on a continuing basis, the application, administration, execution, and effectiveness of those statutes or parts of statutes, the subject matter of which is within that Subcommittee's jurisdiction; and the organization, operation, and regulations of any Federal agency or entity having responsibilities in or for the administration of such statutes, to determine whether these statutes are being implemented and carried out in accordance with the intent of Congress. ...

The Subcommittee, in concert with the Full Committee, undertook its Rule 6(d) responsibility when, on March 18, 1997, Chairman Young and Subcommittee Chairman Hansen initiated a review of the creation of the Monument. Some records were produced by the Council on Environmental Quality (CEQ) and the Department of the Interior (DOI) pursuant to a March 18, 1997, request to the Chair of CEQ and the Secretary of DOI related to the review. The documents that were produced were utilized by unanimous consent at a Subcommittee oversight hearing on April 29, 1997.

However, CEQ Chair Kathleen McGinty refused to produce copies of embarrassing documents that revealed why—beyond the reasons stated in the proclamation and publicly—the monument was created. Staff was given access to some of the documents and Members to others in an attempt to accommodate stated Administration desires to keep the documents secret because the Administration claimed they might be "privileged." However, constitutional executive privilege was never officially asserted by the President over the documents.

Chairman Young was delegated the authority to subpoena Monument records by the Committee on September 25, 1997. After a protracted legal exchange between the White House and Committee staff on the applicability of privileges to the documents with-

held, Chairman Young, on October 9, 1997, issued the subpoena for the records withheld by CEQ Chair Kathleen McGinty.

The subpoena was unreturned on the due date and the committee staff began preparing a contempt resolution. However, on Wednesday, October 22, 1997, the Counsel to the President, Charles F.C. Ruff, produced the subpoenaed documents to the Committee.¹

The delay—from March through October 1997—in producing the ultimately subpoenaed documents thwarted efforts of the Subcommittee and Committee to properly undertake its duties under Article I and Article IV of the Constitution and Rule 6(d) of the Committee Rules. The Subcommittee hearing on the matter had already been held and the remaining days in the first session of the 105th Congress were limited. The Committee is actively considering legislation that modifies the Antiquities Act.

As a result of the delay, the Chairman and Subcommittee Chairman requested this legislative study and investigative majority staff report. The request was to analyze and append relevant documents produced under the subpoena that show if there were abuses of discretion by the President and his advisors in the execution of the Antiquities Act to create the Utah Monument and whether that Act was being implemented and carried out in accordance with the intent of Congress. This legislative study and report responds to that request. This report was developed for and provided to Members of the Committee on Resources for their information so that Members can undertake their legislative and oversight responsibilities under the Constitution, the Rules of the House of Representatives, and the Rules for the Committee on Resources.

The Law: Antiquities Act Monument Designations

The Antiquities Act can be summarized simply. By proclamation, the President may reserve Federal land as a National Monument. The land must be a historic landmark, a historic or prehistoric structure, or an object of historic or scientific interest. In addition, the reserved area must "in all cases" be "confined to the smallest area compatible with the proper care and management of the objects to be protected." The Act contemplates that objects to be protected must be threatened or endangered in some way.²

¹ Based upon representations of CEQ staff, all documents in the possession of CEQ regarding the Grand Staircase-Escalante National Monument have now been produced.

² See Report to accompany S. 4698, Rpt. No. 3797, 59th Cong., 1st Sess. (May 24, 1906).

Executive Summary of Findings Monumental Decisions Behind Closed Doors

I'm increasingly of the view that we should just drop these Utah ideas . . . these lands are not really endangered.

—CEQ Chair Kathleen McGinty

The state of Utah was settled by hearty Mormon pioneers seeking to avoid persecution for their beliefs. They moved west in an effort to find wide, open spaces and freedom from intrusion into their affairs by their neighbors and the government. Now, more than a century later, the citizens of Utah have been forced to endure the ultimate government intrusion: a Federal land grab of 1.7 million acres, taken in the dead of night—with no public notice, no opportunity to comment, and no involvement of the Utah Congressional Delegation. Indeed, the Utah delegation was deceived about the imminent decision to designate the Grand Staircase-Escalante National Monument up until hours before the President's high-profile, public, campaign-style announcement.

Once again, at the hands of the Clinton Administration, the people of Utah were being persecuted for their beliefs. Had Utah been a pro-Clinton state, a state with prominent Democratic Members of Congress, or one that factored importantly into Clinton's re-election effort, then the land-grab would almost certainly not have occurred.

In sum, the documents received by the Committee show several points quite clearly:

(1) the designation of the Monument was almost entirely politically motivated; (2) the plan to designate the monument was purposefully kept secret from Americans and Utah Members of Congress; (3) the Monument designation was put forward even though the Administration officials did not believe that the lands proposed for protection were in danger; (4) use of the Antiquities Act was intended to overcome Congressional involvement in land designation decisions; (5) use of the Antiquities Act for monument designation was planned to evade the National Environmental Policy Act (NEPA). Indeed, its use was specifically intended to evade the provisions of NEPA and other Federal administrative requirements, and to assist the Clinton-Gore reelection effort.

It's Politics, Stupid—Not The Environment

The records and documents provided by the CEQ and DOI clearly demonstrate that the Administration's goal was political, not environmental, a fact that contradicts the Congressional intent of the Antiquities Act.

The Clinton White House took pains to ensure that all prominent Democrats from neighboring states were not only warned in advance, but had an opportunity to give their views on the designation. In an August 14, 1996, memorandum for the President, CEQ Chair Kathleen McGinty opines that the monument designation would be politically popular in several key Western states. In Ms. McGinty's words:

"This assessment squares with the positive reactions by Senator [sic] Harry Reid (D-NV), Governor Roy Romer (D-CO), and Representative Bill Richardson (D-NM) when asked their views on the proposal. . . . Governor Bob Miller's (D-NV) concern that Nevada's sagebrush rebels would not approve of the new monument is almost certainly correct, and echoes the concerns of other friends, but can be offset by the positive response in other constituencies."

In fact, even non-incumbent Democratic candidates for office from states other than Utah were warned about the impending land grab. CEQ Chair Kathleen McGinty explained this in a moment of partisan candor in her September 6, 1996, White House weekly report:

"I have called several members of Congress to give them notice of this story and am working with political affairs to **determine if there are Democratic candidates we should alert.** We are neither confirming nor denying the story; just making sure that Democrats are not surprised."(Emphasis supplied)

It was only Republicans, the lone Utah Democratic Member, and Utahns who were to be kept in the dark. Even media outlets like the Washington Post were advised by insiders to the Utah Monument decision as evidenced by electronic mail (e-mail) traffic:

"Brian: So when pressed by Mark Udall and Maggie Fox on the Utah monument at yesterday's private ceremony for Mo [Udall] Clinton said: **'You don't know when to take yes for an answer.'** Sounds to me like it's going forward. I also hear Romer is pushing the president to announce it when he's in Colorado on Wednesday. . . . --Tom Kenworthy" (Emphasis supplied) (September 10, 1996. From Brian Johnson (CEQ press) to others at CEQ transmitting e-mail from Washington Post reporter Tom Kenworthy)

Another CEQ staffer commenting on the above e-mail:

"Wow. He's got good sources and a lot of nerve." (September 10, 1996, response from Tom Jensen to Brian Johnson's e-mail previously forwarded)

The exchange continues:

"south rim of the grand canyon, sept 18th—be there or be square." (Emphasis supplied) (September 11, 1996, e-mail from Tom Kenworthy to Brian Johnson)

The exchange continues again:

“Nice touch doing the Escalante Canyons announcement on the birthday of Utah’s junior senator! Give me a call if you get a chance.” (September 16, 1996, e-mail from Tom Kenworthy to Brian Johnson)

This e-mail traffic demonstrates that by September 10 and 11, 1996, the Washington Post clearly had been notified not only that the decision had been made, but when and where the announcement would be. By contrast, the Utah Congressional delegation was being told by Ms. McGinty and top CEQ staff on September 9 that no decision had been made and the delegation would be consulted prior to any announcement.

Moreover, CEQ, White House Staff, and DOI officials met with Utah’s delegation staff again on September 16, 1996—two days before the Utah Monument designation—and continued to deny that a decision had been made to go forward with the designation. Meeting notes taken by Tom Jensen of CEQ at the September 16, 1996, meeting indicate the following exchange between Senator Hatch and Kathleen McGinty:

Senator Hatch: “Can you give us an idea of what the POTUS [President] will do before he does it? Don’t want to rely on press.”

Kathleen McGinty: “Yes. We need to caucus and will re-engage.”

This deception, a full week after the Washington Post knew all of the details of the Utah Monument designation and “Utah event,” allowed the White House to move forward without Congressional intervention.

In an August 14, 1996, memo to the President, CEQ Chair Kathleen McGinty candidly discusses the goal of the project—to positively impact the President’s re-election campaign:

“The **political purpose** of the Utah event is to show distinctly your willingness to use the office of the President to protect the environment. . . . It is our considered assessment that an action of this type and scale would help to overcome the negative views toward the Administration created by the timber rider. Designation of **the new monument would create a compelling reason for persons who are now disaffected to come around and enthusiastically support the Administration** . . . Opposition to the designation will come from some of the same parties who have generally opposed the Administration’s natural resource and environmental policies and who, in candor, are unlikely to support the Administration under any circumstances.” (Emphasis supplied)

Many of the documents attempt to gauge the political impact of the action, yet the environmental impact of the decision is rarely explored. Regardless of the environmental impact, the Clinton-Gore campaign needed the Utah Monument to shore up its political base in the environmental movement. When environmental impact is explored in some documents, they note that the lands to be set aside under the designation are **not environmentally threatened**—a sentiment echoed by CEQ Chair Kathleen McGinty herself in a March 25, 1996, e-mail:

"i'm increasingly of the view that **we should just drop these utah ideas**. we do not really know how the enviros will react and i do think there is a danger of 'abuse' of the withdraw/antiquities authorities especially because **these lands are not really endangered.**" (Emphasis supplied)

In a March 22, 1996, e-mail, CEQ Associate Director for Public Lands Linda Lance agreed, warning against the Utah Monument designation because of the political impact of using the Act to set aside unthreatened lands:

"... [T]he real remaining question is not so much what this letter says, but the **political consequences of designating these lands as monuments when they're not threatened** with losing wilderness status, and they're probably not the areas of the country most in need of this designation. **presidents have not used their monument designation authority in this way in the past—only for large dramatic parcels that are threatened.** do we risk a backlash from the bad guys if we do these—do they have the chance to suggest that this administration could use this authority all the time all over the country, and start to argue **that the discretion is too broad?**" (Emphasis supplied)

However, sentiment changed a few days later. The March 27, 1996, e-mail from Linda Lance at CEQ to Kathleen McGinty who forwarded it to others at CEQ shows that DOI was keeping the Monument idea alive:

"since **i and i think others were persuaded at yesterday's meeting w/Interior** that we shouldn't write off the canyonlands and arches monuments just yet, here's another try at a draft letter to Babbitt to get this process started." (Emphasis supplied)

Despite the fact that CEQ Chair advocated dropping the idea, and despite the fact that there is no indication that the President had given either CEQ or Interior any formal notice that he even knew about the idea, DOI was apparently pushing hard (behind the scenes) for this monument. Still there was no letter in March, April, May, June, or July 1996 from the President to the Secretary directing work on designating a possible Utah Monument. At a minimum, this is a violation of the spirit of NEPA, a statute that CEQ is responsible for implementing. Both DOI and CEQ knew it was a violation. Hence, the urgency in seeking the letter from the President to the Secretary directing him to undertake work to designate the Utah Monument.

The Ends Justify The Means:

NEPA, A Law of Convenience For The Clinton-Gore Campaign

No Presidential written direction to the Secretary of DOI emerged until August 7, 1996, and by then, the first planned announcement was only ten days away. Still, no one from state or local government, or the Utah Congressional delegation had been consulted. These actions, in the absence of written direction from the President, make a mockery of what CEQ Chair Kathleen McGinty testified was the overriding purpose behind NEPA:

“It provides the federal government an opportunity for collaborative decision-making with state and local governments and the public.” (September 26, 1996, testimony of Kathleen McGinty before the Senate Energy Committee) (Emphasis supplied)

The National Environmental Policy Act created CEQ, and the Council is charged with reviewing and appraising Federal activities and determining whether they comply with the requirements and policies of the Act. (See, National Environmental Policy Act, Section 204.) Those requirements include development of environmental impact statements (EIS) or NEPA documents by Federal agencies for major Federal actions. Nearly all major Federal actions—like designating land—require some level of NEPA documentation and process. NEPA environmental impact statements receive public notice, public comment, and public hearings. There was a conscious effort to use the Antiquities Act to avoid these NEPA requirements altogether in the designation of the Utah Monument.

Under the Antiquities Act, at the direction of the President, a monument may be established unilaterally by the President under limited circumstances. Using the Antiquities Act had several benefits to the Clinton-Gore Administration: (1) it is not necessary to work with Congress; (2) it is not necessary to comply with the Administrative Procedures Act’s requirements to provide public notice or opportunity to be heard; and (3) it is not necessary to comply with NEPA requirements to involve the public or establish an administrative record on environmental impacts.

In short, the Antiquities Act was used to override the chance that the views of the people of Utah—and most importantly, elected Members of the Utah delegation—would influence the Utah Monument decision. In fact, the documents demonstrate that evading NEPA was a major internal rationale for using the Antiquities Act. This is a striking example of how the Clinton-Gore Administration manipulated the law to the advantage of the Clinton-Gore campaign for purposes of a “Utah event”—an event that might make the insatiable desires of the environmentalist constituency happy for a moment. Alarming, the chief architects of the endeavor to evade NEPA were in the leadership of CEQ—the entity charged with overseeing NEPA. A draft memo dated July 25, 1996, from CEQ Chair Kathleen McGinty to the President revealed that use of the Act was a means to avoid NEPA:

“Ordinarily, if the (Interior) Secretary were on his own initiative to send you a recommendation for establishment of a monument, he would most likely be required to comply with NEPA and certain Federal land management laws in advance of submitting his recommendation. But, because he is responding to your request for information, he is not required to analyze the information or recommendations under NEPA or other laws. And, because Presidential actions are not subject to NEPA, you are empowered to establish monuments under the Antiquities Act without NEPA review.” (Emphasis supplied)

Although this revealing paragraph was edited out of the final memo, it is alarmingly hypocritical that CEQ, the agency created

by NEPA and charged with seeing that it is complied with, was clearly advising the President how to evade NEPA. The same July 25, 1996, draft, written by CEQ staffer Thomas Jensen, makes it clear, however, that this was the secret goal. Compare this with the lofty public pronouncements from high-ranking CEQ officials about the importance that *other* government entities comply with NEPA:

"The lack of attention to NEPA's policies speaks to the tendency of our society to devalue those provisions of law that are not enforceable through the judicial system. One answer to the common complaint that we live in an overly litigious society is for individuals and **agencies to take seriously such provisions as the national environmental policy set forth in section 101 of NEPA**. Absent such a trend, interested individuals will naturally be skeptical of approaches that are not amendable to a legal remedy." Dinah Bear, General Counsel, CEQ, *The National Environmental Policy Act: its Origins and Evolutions*, *Natural Resources and Environment*, Vol. 10, No. 2 (Fall, 1995). (Emphasis supplied)

Contrast this with the testimony of CEQ Chair Kathleen McGinty to the Senate Energy and Natural Resources Committee within days of the designation (September 26, 1996):

"In many ways, NEPA anticipated today's call for **enhanced local involvement** and responsibility, sustainable development and government accountability. By **bringing the public into the agency decision-making process**, NEPA is like no other statute and is an extraordinary tribute to the ability of the American people to build upon shared values ..."

"[NEPA] gives **greater voice to communities**. It provides the Federal Government an opportunity for collaborative decision-making with state and local governments and the public. ... It should and in many cases does improve Federal decision-making ..."

"As directed by NEPA, CEQ is responsible for overseeing implementation of the environmental impact assessment process. ..." (Emphasis supplied)

Either NEPA is an important statute worthy of implementation, as CEQ Chair McGinty states, or it is not. Either public, state, and local involvement is important, as CEQ Chair McGinty states, or it is not. Apparently, in the case of the Utah Monument designation, it was not important enough to implement NEPA because the end apparently justified the means.

What *was* important was selective application of NEPA for the convenience of the Clinton-Gore re-election effort. **One of two conclusions exist as to why NEPA was not applied to the Utah Monument designation as it would "ordinarily" be applied (the words used by Ms. McGinty). The first possible conclusion is that the Utah Monument designation would not pass muster under NEPA. The second possible conclusion is that NEPA would not allow a decision before the 1996 Presidential election, and the designation was needed for the**

Further, it is obvious from the documents that the Administration, in its zeal to use the Antiquities Act in an attempt to shield the Utah land grab from APA and NEPA, did not fully comply with the statutory requirements to justify using the Antiquities Act—namely that the President initiate the designation process. Ms. McGinty clarifies this point in a July 29, 1996, e-mail to Todd Stern of CEQ:

“the president **will do** the utah event on aug 17. however, we still need to get the letter (from the President to Interior Secretary Bruce Babbitt) signed asap. the reason: under the antiquities act, **we need to build a credible record that will withstand legal challenge** that: (1) the president asked the secretary to look into these lands to see if they are of important scientific, cultural, or historic value; (2) the secy undertook that review and presented the results to the president; (3) the president found the review compelling and therefore exercised his authority under the antiquities act. presidential actions under this act have always been challenged. they have never been struck down, however. so, **letter needs to be signed asap so that secy has what looks like a credible amount of time to do his investigation of the matter.** we have opened the letter with a sentence that gives us some more room by making it clear that the president and babbitt had discussed this some time ago.” (Emphasis supplied)

This e-mail clarifies the following points: (1) by July 29, 1996, not only had the decision to make the designation been made by the White House, the staff had already agreed to an announcement event (the date was eventually postponed) and (2) although this decision had already been made, a fake paper trail had to be carefully crafted to make it appear as if the President had asked the Secretary to look into the matter and initiate the staff work. By that time, however, the staff work was already apparently underway. This is an alarming breach of responsibility at the top levels of DOI and CEQ.

In fact, CEQ’s Tom Jensen, in a frantic July 23, 1996, e-mail, asks fellow CEQ staffer Peter Umhofer to help create the fake paper trail:

“Peter, I need your help. The following text needs to be transformed into a signed POTUS (President of the United States) letter ASAP. **The letter does not need to be sent, it could be held in an appropriate office (Katie’s? [McGinty’s] Todd Sterns?) but it must be prepared and signed ASAP.** You should discuss the processing of the letter with Katie, given its sensitivity.” (Emphasis supplied)

The e-mail spells out the CEQ plan to create the letter to the Secretary and store it in its own White House files—never even really sending it to the Secretary—*creating the false appearance that the President’s letter had predated and prompted the staff work on Escalante*. All the while, work on the monument designation was already underway within DOI to draw the necessary Antiquities Act papers to make the secretly planned designation. With-

out such a letter, the White House would have had to comply with NEPA just like the rest of America.

Campaign Style "Event" For A Campaign-Motivated Decision That Violates The Intent of the Antiquities Act

The documents show that the White House abused its discretion in nearly every stage of the process of designating the Grand Staircase-Escalante National Monument. It was a staff-driven effort, first to short-circuit a Congressional wilderness proposal, and then to help the Clinton-Gore re-election campaign. The lands to be set aside, by the staff's own descriptions, were not threatened—and hence did not qualify for protection as a National Monument.

The decision was withheld from any public scrutiny or Congressional oversight—and Members of the Utah Congressional delegation were deceived as to its impending status until well after the decision had been made and the campaign-style announcement event was only days away. The administrative and environmental hurdles that would normally accompany such an action were evaded by contorting a turn-of-the-century statute designed to protect Indian artifacts into a 1.7-million-acre land grab. And finally, to justify use of this Act, and evasion of the requirements of NEPA—the CEQ's own enabling statute—the administrative record was toyed with to create the false impression that the President had requested the staff work before it had been conducted.

Indeed, a careful review of the Act and historic Presidential use of the Antiquities Act clarifies that the President's use of the Act was an abuse of discretion. The Antiquities Act of 1906 is an obscure Act that pre-dated the regulatory reforms that require public notice, analysis of environmental and economic impacts, and an opportunity for interested parties to be heard. Until Clinton used it in the 1996 Utah land grab, the Act had languished unused for nearly two decades.

The Act is designed to help protect architecturally and anthropologically unique artifacts from acquisition or destruction. It has primarily been used to protect antique artifacts, historic buildings, and relatively small parcels of rare geologic formations. It was emphatically not designed to be used to set aside massive chunks of western states. When the Act was created by Congress, the West was still being settled. Congress wanted to prevent valuable historic and geologic artifacts from being destroyed or carried off. The Act was necessary, according to the 1906 bill report, "in view of the fact that the historic and prehistoric ruins and monuments on the public lands of the United States are rapidly being destroyed by parties who are gathering them as relics and for the use of museums and colleges, etc." Nowhere was a 1.7-million-acre land grab mentioned or contemplated. Nowhere in the subpoenaed documents obtained were there serious allegations of the 1.7 million acres being "threatened" in any way.

Indeed, the House debate over the bill records that, even nearly a century ago, western Members were concerned that the powers of this Act not be used to grab up huge quantities of land. One such Member, Mr. Stephens of Texas, only agreed not to object to consideration of the bill after being assured by the bill's proponent, Mr.

Lacey, that such an outcome was not possible under the act, whose major focus was Indian artifacts:

Mr. LACEY. There has been an effort made to have national parks in some of these regions, but this will merely make small reservations where the objects are of sufficient interest to preserve them.

Mr. STEPHENS of Texas. Will that take this land off the market, or can they still be settled on as part of the public domain?

Mr. LACEY. It will take that portion of the reservation out of the market. It is meant to cover the cave dwellers and cliff dwellers.

Mr. STEPHENS of Texas. How much land will be taken off the market in the Western States by the passage of this bill?

Mr. LACEY. Not very much. The bill provides that it shall be the smallest area necessary [sic] for the care and maintenance of the objects to be preserved.

Mr. STEPHENS of Texas. Would it be anything like the forest-reserve bill, by which seventy or eighty million acres of land in the United States have been tied up?

Mr. LACEY. Certainly not. The object is entirely different. It is to preserve these old objects of special interest in the Southwest, whilst the other reserves the forests and the water courses.

Mr. STEPHENS of Texas. I will say that that bill was abused. I know of one place where in 5 miles square you could not get a cord of wood, and they call it a forest, and by such means they have locked up a very large area in this country.

Mr. LACEY. The next bill I desire to call up is a bill ... which permits the opening up of specified tracts of agricultural lands where they can be used, by which the very evil that my friend is protesting against can be remedied. ...

Mr. STEPHENS of Texas. I hope the gentleman will succeed in passing that bill, and this bill will not result in locking up other lands. I have no objection to its consideration.

(40 Cong. Rec. H7888, June 5, 1906)

So why take an old, obscure law designed to protect cliff dwellings or historic relics and manipulate it into a 1.7-million-acre land grab? The answer is clear from the attached documents: the ends (the political gain amongst environmental groups) justified the means (violating the purpose and intent of the Antiquities Act and NEPA to lock up the land).

The Clinton-Gore Administration's abuse of the Antiquities Act meant (1) it was not necessary to work with Congress and elected leaders from Utah; (2) it was not necessary to comply with the Administrative Procedures Act's requirements to provide public notice or opportunity to be heard; and (3) it was not necessary to comply NEPA's requirements of establishing an administrative record on environmental impacts.

The early e-mail traffic indicated a concern with establishing a paper trail from the President to the Secretary. As early as March

21, 1996, e-mail traffic between Linda Lance (Office of the Vice President) and Kathleen McGinty and others comment on several drafts of a letter that was to come from the President to Secretary Babbitt requesting information on lands in Utah eligible for monument designation. Solicitor Leshy was informed of the importance of past practice on this important legal point.

"As I recall, the advice we have given over the last couple of decades is that, in order to minimize NEPA problems on Antiquities Act work, it is preferable to have a letter from the President to the Secretary asking him for his recommendations. Here are my questions: . . .

5. If the President signs a proclamation, and a lawsuit is then brought challenging lack of Secretarial NEPA compliance, could a court set aside the proclamation; i.e. what is the appropriate relief?

Please give me your . . . reactions by return e-mail, and keep this close."

(April 24, 1996, e-mail from Sam Kalen to John Leshy and others)

Even earlier, on March 20, 1996, Kathleen McGinty evinced concern that the paper trail needed to be created as quickly as possible to justify Interior's actions under the Antiquities Act:

"attached is a letter to babbitt as we discussed yesterday that makes clear that the utah monument action is one generated by the executive office of the president, not the agency. . . . ideally it should go tomorrow."

(March 20, 1996, e-mail from Kathleen McGinty to Tom Jensen)

The lack of a Presidential letter making the request is critical. The NEPA requirements for notice, comment, and public process safeguards would ordinarily apply to a major Federal action designating lands that were initiated outside of the Antiquities Act process. CEQ staff apparently knew this approximately six months before the actual decision that a record needed to be established with a request from the President to Secretary Babbitt. Time was of the essence, at least in the early part of 1996, before legislative activity on the Utah wilderness bill ended.

The record is clear that from start to finish, this was an abuse of Presidential discretion, designed to gain political advantage at the expense of the people of Utah—all the while keeping the decision behind closed doors for as long as possible.

Highlights of Select Utah Monument Records: A Glimpse Of The Abuse Of Trust And Discretion

As early as August 3, 1995, the Department of the Interior discussed the use of the Antiquities Act to withdraw land for the Utah Monument. In a memo to "Raynor" and "Baum," from "Dave" (all within the DOI Solicitor's Office) the author discussed the legal risks involved with DOI studying lands for national monument status. He noted that:

"To the extent the Secretary [of the Interior] proposes a national monument, NEPA applies. However, monuments proposed by the president do not require NEPA compliance because NEPA does not cover presidential actions. To the extent that the president directs that a proclamation be drafted and

an area withdrawn as a monument, he may direct the Secretary of the Interior to be part of the president's staff and to undertake and complete all the administrative support. This Interior work falls under the presidential umbrella." (Emphasis supplied)

This realization—that the administrative record must make it look like the idea came from the President, and not from an agency, in order to avoid NEPA compliance—is a dominant theme manifested throughout the documents. The idea was to create the false impression that this was an idea that came from the President, instead of from the Department of the Interior.

In a March 19, 1996, e-mail from Linda Lance (CEQ director for Land Management) to Tom Jensen (CEQ) and other CEQ staff, Ms. Lance states:

"attached is a letter to babbitt as we discussed yesterday that makes clear that the utah monument action is one generated by the executive office of the president, not the agency."

This letter was never signed until August 7, 1996, and indeed may never have been sent.³ This is significant because it demonstrates an effort—beginning with DOI in 1995—to construct an Antiquities Act rationale to circumvent NEPA. All the while, meetings and work on the monument designation are proceeding within and between DOI, CEQ, and Department of Justice.

A draft letter from Kathleen McGinty on behalf of the President to Babbitt also makes it very clear that one early motivation behind the monument idea was to circumvent Congress's authority over wilderness designations, and specifically to control the Utah wilderness debate. The draft says:

"As you know, the Congress currently is considering legislation that would remove significant portions of public lands in Utah from their current protection as wilderness study areas. . . . Therefore, on behalf of the President I/we are requesting your opinion on what, if any, actions the Administration can and should take to protect Utah lands that are currently managed to protect wilderness eligibility, but that **could be made unsuitable for future wilderness designation if opened for development by Congress.** . . . The President particularly seeks your advice on the suitability of such lands for designation as national monuments under the Antiquities Act of 1906." (Emphasis supplied) (March 19, 1996 e-mail from Linda Lance (CEQ director for Land Management) to Tom Jensen (CEQ) and other CEQ staff.)

This blatant disregard for Congressional authority over public lands is further evidence that staff was attempting to construct a path around NEPA and Congress.

³Whether DOI ever actually received the Clinton letter is at issue because: (1) DOI was asked to provide all Utah Monument documents to the Committee, but never supplied the August 7, 1996, copy signed by President Clinton—that version was supplied to the Committee by the White House after the Chairman was authorized on September 25, 1997 to subpoena Utah Monument documents; and (2) this strategy—to create the letter as a paper trail but never send it—was discussed in White House e-mail traffic.

On March 21, 1996, Linda Lance wrote another e-mail message to Kathleen McGinty responding to comments Ms. McGinty had made about the draft letter. She commented:

"I completely agree that this can't be pitched as our answer to their Utah bill. But I'm having trouble deciding where we go from here. If we de-link from Utah but limit our request for info to Utah, why? If we instead request info on all sites that might be covered by the antiquities act, we probably get much more than we're probably ready to act on, **including some that might be more compelling than the Utah parks?** Am I missing something or lacking in creativity? Is there another Utah hook? Whatdya think?" (Emphasis supplied.)

This communication makes two things clear. First, in addition to helping the Clinton-Gore campaign, the purpose of the monument was to circumvent Congressional control over Utah lands. This was a direct response to proposed Utah wilderness legislation. Second, CEQ staff concluded that they had to come up with a facade, "another Utah hook", so their real motivations weren't exposed.

This e-mail message evinces CEQ knowledge that other lands were much better suited to monument designation. In fact, the next day—March 22, 1996—Linda Lance sent another e-mail to T. J. Glauthier at OMB and Kathleen McGinty at CEQ that expounded on this problem. She stated that the real problem with drafting a request letter that singled out Utah lands was:

"the political consequences of designating these lands as monuments when they're not threatened with losing wilderness status, and they're probably not the areas of the country most in need of this designation." (Emphasis supplied)

She concluded the e-mail message by prophetically questioning whether:

"the bad guys [will] ... have the chance to suggest that this administration could use this authority all the time all over the country, and start to argue that **the discretion is too broad?**" (Emphasis supplied)

It is interesting to note that the Administration staff foresaw the kind of uproar the Utah Monument would cause. Ms. Lance recognized first, that people would see this as a blatant abuse of Presidential authority, and second that there may be cause to narrow the President's discretion under the Act. This process is currently underway with the successful passage in the House of the National Monument Fairness Act of 1997. Other amendments to the Antiquities Act and NEPA are currently under consideration by Members of the House Committee on Resources.

On March 25, 1996, Kathleen McGinty stated that she agreed with these doubts about the Utah Monument. In fact she was so convinced that the lands in question weren't in any real danger that she was ready to drop the whole project. She noted in an e-mail message to T. J. Glauthier at OMB and Linda Lance at CEQ that:

"i'm increasingly of the view that we should just drop these utah ideas. we do not really know how the enviros

will react and I do think there is a danger of 'abuse' of the withdraw/antiquities authorities especially because **these lands are not really endangered.**" (Emphasis supplied)

A March 27, 1996, e-mail from Linda Lance at CEQ to Robert Vandermark at CEQ shows that DOI was trying to push the monument designation despite the lack of endangered lands. Lance stated:

"since i and i think others were persuaded at yesterday's meeting w/interior that we shouldn't write off the canyonlands and arches monuments just yet, here's another try at a draft letter to Babbitt to get this process started." (Emphasis supplied)

It is clear that DOI was still advocating the monument despite the fact that CEQ was ready to drop the project. Even the DOI Solicitor's Office concluded that case law requires full compliance with NEPA's requirements when national monument proposals come out of DOI.

At this point the monument idea had been tailored to respond to the Utah wilderness bills in Congress. The areas in question were centered around Arches National Park and Canyonlands National Park—areas that were in no danger of losing protection. At this point no mention had been made about the Kaiparowits Plateau or saving the West from Andalex Coal mining.

The Kaiparowits Plateau was first mentioned by Tom Jensen at CEQ in an e-mail to Linda Lance, T. J. Glauthier (OMB) and Kathleen McGinty on March 27, 1996. He stated that in the latest version of the proposed Clinton letter to Babbitt, he had added a reference to Glen Canyon National Recreation Area

"because KM [probably Kathleen McGinty] and others may want to rope in the Kaiparowits and Escalante Canyons regions if this package ultimately doesn't seem adequate to the President's overall purpose."

By "rop[ing] in the Kaiparowits," the Administration would effectively quash the Andalex Coal Mine—in spite of the fact that the NEPA process (already under way) was incomplete for the mine. Until that process was completed, **it would be impossible to know** whether the mine would have any negative impact on the environment. Unconcerned with the ultimate conclusion of these environmental impact studies, the Administration wanted Kaiparowits included so they could claim that there were some "endangered" lands to be "protected" by the monument.

It is worth noting that **the Chairman and Subcommittee Chairman have requested the draft Andalex Coal mine EIS five times since March 1997 for purposes of committee oversight and legislative needs, but the Secretary has failed to provide the record as requested.**

By April 1996, DOI was starting to get frantic about the idea that they were in violation of NEPA by continuing to go forward on the national monument idea without prior Presidential direction. In an April 25, 1996, e-mail, Sam Kalen of the DOI Solicitor's office noted this concern to Solicitor John Leshy and colleagues Dave Watts and Robert Baum:

"As I recall, the advice we have given over the last couple of decades is that, **in order to minimize NEPA problems on Antiquities Act work**, it is preferable to have a letter from the President to the Secretary asking him for his recommendations." (Emphasis supplied)

As late as July 23, 1996, CEQ was still trying to get Bill Clinton to sign a letter to send to Babbitt. In an e-mail from Tom Jensen (CEQ) to Peter Umhofer at the White House, Mr Jensen begged:

"I need your help. The following needs to be transformed into a signed POTUS letter ASAP. **The letter does not need to be sent, it could be held in an appropriate office ... but it must be prepared and signed ASAP.**" (Emphasis supplied)

On July 25, 1996, Kathleen McGinty sent a memo to the President with an attached, suggested letter to Babbitt. This is also the first time, as far as we can tell from the documents, that CEQ mentions the Andalex coal mine as an excuse for the national monument.

By this time it is obvious that Interior had been working on the Utah Monument for quite some time. In fact, three days later, on July 26, 1996, John Leshy sent a letter to University of Colorado law professor Charles Wilkinson asking him to draw up the actual proclamation. Included with the letter was a package of materials that Interior had put together on their monument proposal. Note that at this same time CEQ was still frantically trying to get the President to agree to send Babbitt a request to **start** looking at the lands in question. However, the DOI work was already underway. In this case, things were being done in exactly the reverse order.

On July 29, 1996, Kathleen McGinty sent an e-mail to Todd Stern at the White House pleading for the President to sign something. She noted that the

"letter needs to be signed asap so that [the] secy has what **looks like** a credible amount of time to do his investigation of the matter." (Emphasis supplied)

The President finally signed the letter authorizing DOI to **begin** its work on August 7, 1996, but it seems that the final decision to create a Grand Staircase-Escalante National Monument had already been made—by someone—on or before July 29, 1996, as evidenced by the July 29 e-mail from Kathleen McGinty to Todd Stern:

"The President will do the Utah event on Aug 17."

The documents show, however, that for some reason, the White House decided not to go ahead with the August 17 announcement date. On August 5, 1996, Kathleen McGinty sent a memo to Marcia Hale at the White House telling her that Leon Panetta wanted them to call several western Democrats to get their reactions to a possible monument proclamation. She noted that "[t]he reactions to these calls, and other factors, will help determine whether the proposed action occur." She also emphasized that the whole thing should be kept secret, noting that "any public release of the information would probably foreclose the President's option to proceed." It seems that at this point, the focus had shifted from pre-empting Congressional authority over Utah wilderness to creating a Presi-

dential campaign event. The announcement had to be postponed until Democratic politicians could be consulted.

On August 14, 1996, Kathleen McGinty sent the President a memo outlining the possible places to have the photo-op announcement event. The three options discussed were (1) an oval office setting; (2) on the Utah lands themselves; or (3) at Jackson Hole, Wyoming. Ms. McGinty noted that Secretary Babbitt thought that the Utah option would be the most "confrontational" or "in-your-face" event. Ms. McGinty commented that she thought that all three options sounded good to her. Since the event was designed to be an election year photo-op, the Arizona setting became the choice.

In this memo Ms. McGinty reveals the real purpose of the monument:

"The political purpose of the Utah event is to show distinctly your willingness to use the office of the President to protect the environment. In contrast to the Yellowstone ceremony, this would not be a 'feel-good' event. You would not merely be rebuffing someone else's bad idea, you would be placing your own stamp, sending your own message. It is our considered assessment that an action of this type and scale would help to overcome the negative views toward the Administration created by the timber rider. Designation of the new monument would create a compelling reason for persons who are now disaffected to come around and enthusiastically support the Administration." (Emphasis supplied)

She also underscored the potential political benefits in key western states, as confirmed by the non-Utah Democratic politicians who had been consulted:

"In addition, the new monument will have particular appeal in those areas that contribute the most visitation to the parks and public lands of southern Utah, namely, coastal California, Oregon and Washington, southern Nevada, the Front Range communities of Colorado, the Taos-Albuquerque corridor, and the Phoenix-Tucson area. This assessment squares with the positive reactions by Sen. Reid, Gov. Romer, and Rep. Richardson when asked their views on the proposal."

Finally, she added that the Administration really didn't have anything to lose, as far as votes are concerned:

"Opposition to the designation will come from some of the same parties who have generally opposed the Administration's natural resource and environmental policies and who, in candor, are unlikely to support the Administration under any circumstances." (Emphasis supplied)

The situation was painted as a no-lose political situation. Translation: The monument designation will help solidify Clinton's electoral base—while those who will object to the monument, as in Utah, will oppose Clinton's re-election anyway. They did not matter.

The event was postponed further. On August 23, 1996, Kathleen McGinty wrote another memo to the President begging him to act

on the monument soon. She stated, **"in any event, we need to decide this soon, or I fear, press leaks will decide it for us."**

The leak finally occurred. In a September 6, 1996, memo from Kathleen McGinty to the President, she informed him that **"the Washington Post is going to run a story this weekend reporting that the Administration is considering a national monument designation."** She also told him that "we are working with Don Baer and others to scope out sites and dates that might work for an announcement on this issue."

After the September 7, 1996, Washington Post article, Senator Bennett wrote to Secretary Babbitt requesting the Administration not to take such a drastic step without time for significant public input. Secretary Babbitt responded **on September 13—just five days before the event announcing the Utah Monument**—telling him that nothing was imminent and that no decisions had yet been made.

It is important to note that two days earlier, on September 11, 1996, Tom Kenworthy, a Washington Post reporter, had confirmed the whole story—including the date, time, and exact location of the announcement event at the Grand Canyon. In a September 11 e-mail to Brian Johnson, CEQ's press spokesman, Kenworthy confirmed he had all the information he needed: "south rim of the grand canyon, sept 18—be there or be square." **While the Utah Monument designation was being concealed from the entire Utah Congressional delegation, it had already been revealed to the Washington press.** This strategy worked to the Administration's advantage by encouraging press interest in the event, while effectively eliminating the possibility of Congress stepping in to stop the proposed action.

On September 18, 1996, President Clinton, standing on the South Rim of the Grand Canyon, with nature's splendor as his backdrop, finally got his photo-op. He told the nation that he was following in Teddy Roosevelt's footsteps, and that he was saving the environment from Dutch coal companies. It worked just like the Administration predicted. Bill Clinton locked up the environmental votes in the West and carried key western states like California, Arizona, and Nevada. Of course they lost Utah, but as Kathleen McGinty had predicted, Utahns are voters "who, in candor, are unlikely to support the Administration under any circumstances."

In the final analysis, the Utah Monument designation was all about politics. To achieve their political ends, the Clinton-Gore Administration contorted a century-old statute and evaded the environmental requirements they foist on others. The Administration took pains to see that no one knew about this decision until the last minute, even to the point of deceiving the entire Utah Congressional delegation—all so they could get a political photo-op out of the monument proclamation, and preclude any Congressional action that might stop the event. It comes as no surprise the announcement event was finally held not in Utah, but across the Grand Canyon in more hospitable Arizona. This was an abuse of discretion under the Antiquities Act and a violation of NEPA by the Clinton-Gore Administration.

L.H. 132

DOI #31

August 3, 1995

NOTE

TO: RAYNOR
BAUM

RE: ANTIQUITIES ACT

ATTACHED ARE SOME SAMPLE PRES PROCLAMATIONS. SOME JUST DESIGNATE THE MONUMENT, OTHER DESIGNATE AND WITHDRAW THE MONUMENT. IT WOULD FOLLOW THAT ANWR COULD BE DESIGNATED - A PRESTIGE ISSUE - WITHOUT A FURTHER WITHDRAWAL OF LAND.

WE SHOULD MEET. I THINK WE HAVE ENOUGH MATERIALS FOR A MEETING WITH JOHN. HE WAS NOT LOOKING FOR A PAPER, BUT RATHER A BRIEF TALK ABOUT THE CHOICES AND LEGAL RISKS.

DAVE

PRESIDENTIAL PROCLAMATIONS

1. The Antiquities Act of 1906 provides:

The President...is authorized, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government...to be national monuments, and may reserve as part thereof parcels of lands, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected. 16 U.S.C. §431. (Emphasis added.)

2. History

Many areas of the National Park System were originally established as national monuments under this act and placed under the care of the Department of the Interior to be administered by the National Park Service under the Service's Organic Act of 1916. 16 U.S.C. §1. The most recent proclamations were signed by President Carter and established various Alaska monuments, the predecessors to the national parks and preserves eventually established by the Alaska National Interest Lands Conservation Act.

3. Analysis

When the president undertakes the preparation of a proclamation, the restrictions of the law must be carefully observed and documented. The lands must be federally owned or controlled. Private and state lands are excluded.

The area must be the smallest area compatible with management of the objects. Although broad discretion is vested in the president, the administrative record must reflect the rationale basis for the acreage.

Most areas of the National Park System were established because of objects of historic or scientific interest. Again, an administrative record must be established regarding the objects to be protected and their significance properly demonstrated.

4. Other Laws

The Federal Land Policy and Management Act, 43 U.S.C. § 1701, does not preclude or restrain presidential proclamations, even though it has restrictions on other forms of public land

withdrawals of areas over 5,000 acres. See 43 U.S.C. § 1714(c)(1).

To the extent the Secretary proposes a national monument, NEPA applies. However, monuments proposed by the president do not require NEPA compliance because NEPA does not cover presidential actions. To the extent that the president directs that a proclamation be drafted and an area withdrawn as a monument, he may direct the Secretary of the Interior to be part of the president's staff and to undertake and complete all the administrative support. This Interior work falls under the presidential umbrella.

5. Litigation

I have attached the most recent case involving the Alaska monuments. The case is instructive and should be read, understood and followed. Careful observance of the administrative and institutional structures as well as a focused administrative record will enhance success in the court house.

RECORD TYPE: FEDERAL (ALL-IN-1 MAIL)

CREATOR: Kathleen A. McGinty (MCGINTY_K) (CEQ)

CREATION DATE/TIME: 20-MAR-1996 08:01:40.12

SUBJECT: utah letter to babbitt

TO: Thomas C. Jensen

(JENSEN_T) (CEQ)

READ: 20-MAR-1996 08:03:18.37

TEXT:

i don't have this document. but, i want to see it personally and clear off on it. thx.

***** ATTACHMENT 1 *****
ATT CREATION TIME/DATE: 19-MAR-1996 19:02:00.00

ATT BODYPART TYPE: E

ATT CREATOR: CN=Linda L. Lance/O=OVP

ATT SUBJECT: letter to babbitt re monuments

ATT TO: MCGINTY_K (MCGINTY_K@A1@CD)

ATT TO: GLAUTHIER_T (GLAUTHIER_T@A1@CD)

ATT TO: JENSEN_T (JENSEN_T@A1@CD)

ATT TO: BEAR_D (BEAR_D@A1@CD)

ATT TO: FIDLER_S (FIDLER_S@A1@CD)

ATT CC: CRUTCHFIELD_J (CRUTCHFIELD_J@A1@CD)

ATT CC: SHUFFIELD_A (SHUFFIELD_A@A1@CD)

TEXT:

Message Creation Date was at 19-MAR-1996 19:02:00.

attached is a letter to babbitt as we discussed yesterday that makes clear that the utah monument action is one generated by the executive office of the president, not the agency. craig drafted and i edited.

it seems to me it could go from katie and/or tj rather than having to go through the clearance process for the pres. signature since time is a concern, but dinah should sign off on that, and it could be done either way.

also, do we know whether the canyonlands and arches areas we're considering would be affected by the utah wilderness bill -- see my question in bold on the attachment.

katie and tj, you should agree on how to sign this, and then one of your offices can just finalize and send it out. ideally it should go tomorrow. if you want to discuss, just yell.

***** END ATTACHMENT 1 *****

ATT CREATION TIME/DATE:19-MAR-1996 19:01:00.00

ATT BODYPART TYPE:D

TEXT:

The following attachments were included with this message:

TYPE : FILE
NAME : PARKSLTR.MON

***** END ATTACHMENT 2 *****

***** ATTACHMENT 3 *****

ATT CREATION TIME/DATE:19-MAR-1996 19:01:00.00

ATT BODYPART TYPE:p

ATT SUBJECT:PARKSLTR

TEXT:

PRINTER FONT 12_POINT_ROMAN

Dear Secretary Babbitt,

The President has asked that we contact you to request information within the expertise of your agency. As you know, the Congress currently is considering legislation that would remove significant portions of public lands in Utah from their current protection as wilderness study areas. Protection of these lands is one of the highest environmental priorities of the Clinton Administration.

Therefore, on behalf of the President I/we are requesting your opinion on what, if any, actions the Administration can and should take to protect Utah lands that are currently managed to protect wilderness eligibility, but that could be made unsuitable for future wilderness designation if opened for development by Congress. Do the canyonlands and arches areas fit this description? are they threatened by the Utah wilderness bill? Is there a better way to describe the relevant lands? The President particularly seeks your advice on the suitability of such lands for designation as national monuments under the Antiquities Act of 1906.

The President wishes to act to protect these lands as expeditiously as possible, particularly given the threat from pending congressional action. Please respond as soon as possible. If there are land areas that you have already reviewed and that may be appropriate for immediate action, please provide that information separately and as soon as possible.

Thank you for your assistance.

Katie and/or TJ??c

***** END ATTACHMENT 3 *****

RECORD TYPE: FEDERAL (ALL 4-1 MAIL) :

(7-2)

CREATOR: Thomas C. Jensen (JENSEN_T) (CEQ)

CREATION DATE/TIME: 20-MAR-1996 08:26:53.99

SUBJECT: Linda's park letter to babbitt

TO: Thomas C. Jensen (JENSEN_T) (CEQ)
 READ: 20-MAR-1996 08:27:08.41

TO: Kathleen A. McGinty (MCGINTY_K) (CEQ)
 READ: 20-MAR-1996 08:54:44.03

TEXT:

PRINTER FONT 12_POINT_ROMAN

Dear Secretary Babbitt,

The President has asked that we contact you to request information within the expertise of your agency. As you know, the Congress currently is considering legislation that would remove significant portions of public lands in Utah from their current protection as wilderness study areas. Protection of these lands is one of the highest environmental priorities of the Clinton Administration.

Therefore, on behalf of the President I/we are requesting your opinion on what, if any, actions the Administration can and should take to protect Utah lands that are currently managed to protect wilderness eligibility, but that could be made unsuitable for future wilderness designation if opened for development by Congress. Do the canyonlands and arches areas fit this description? are they threatened by the Utah wilderness bill? is there a better way to describe the relevant lands? The President particularly seeks your advice on the suitability of such lands for designation as national monuments under the Antiquities Act of 1906.

The President wishes to act to protect these lands as expeditiously as possible, particularly given the threat from pending congressional action. Please respond as soon as possible. If there are land areas that you have already reviewed and that may be appropriate for immediate action, please provide that information separately and as soon as possible.

Thank you for your assistance.

Katie and/or TJ??

RECORD TYPE: FEDERAL (EXTE. L MAIL) (H3)

CREATOR:CN=Linda L. Lance/0=0VP00VP0LNGATE0EOPMRX

CREATION DATE/TIME:21-MAR-1996 18:36:00.00

SUBJECT:Re: KH's comments on yesterday's monument letter

TO:MCGINTY_K (MCGINTY_K0al0cd) (CEQ)
 READ:21-MAR-1996 18:51:01.46

CC:jensen_t (jensen_t0al0cd) (CEQ)
 READ:NOT READ

CC:bear_d (bear_d0al0cd) (CEQ)
 READ:21-MAR-1996 18:40:36.85

CC:crutchfiel_j (crutchfiel_j0al0cd) (OMB)
 READ:22-MAR-1996 09:26:11.41

CC:glauthier_t (glauthier_t0al0cd) (OMB)
 READ:26-MAR-1996 23:00:11.73

TEXT:

Message Creation Date was at 21-MAR-1996 18:40:00

i completely agree that this can't be pitched as our answer to their utah bill. but i'm having trouble deciding where we go from here. if we delink from utah but limit our request for info to utah, why? if we instead request info on all sites that might be covered by the antiquities act, we probably get much more than we're probably ready to act on, including some that might be more compelling than the utah parks? am i missing something or lacking in creativity? is there another utah hook? whatdya think?

i'm getting concerned that if we're going to do this we need to get this letter going tomorrow. almost everything else is pretty much ready to go to the president for decision, although some drafting of the formal documents like pres. memos still needs to be done. thanks for your help.

4

RECORD TYPE: FEDERAL (EXTERNAL MAIL)

CREATOR:CN=Linda L. Lance/O=OVPA0VP3LNGATE@EOPMKS:

CREATION DATE/TIME:22-MAR-1996 18:56:00.00

SUBJECT:redraft of president's babbitt letter and question

TO:GLAUTHIER_T (GLAUTHIER_T@A1@CD) (OMB)
 READ:23-MAR-1996 11:35:23.85

TO:MCGINTY_K (MCGINTY_K@A1@CD) (CEQ)
 READ:25-MAR-1996 13:13:14.47

TO:JENSEN_T (JENSEN_T@A1@CD) (CEQ)
 READ:NOT READ_

TO:BEAR_D (BEAR_D@A1@CD) (CEQ)
 READ:22-MAR-1996 19:00:45.60

TO:CRUTCHFIEL_J (CRUTCHFIEL_J@A1@CD) (OMB)
 READ:22-MAR-1996 19:01:57.58

TO:BEARD_B (BEARD_B@A1@CD) (OMB)
 READ:25-MAR-1996 07:44:08.18

TEXT:

Message Creation Date was at 22-MAR-1996 19:00:00

attached is a minimalist approach to the letter to babbitt. contrary to what justice may have suggested, i think it's important to limit the inquiry to lands covered by the antiquities act, since that's the area in which he can act unilaterally. to make a broader request risks scaring people, and/or promising followup we can't deliver.

i realized the real remaining question is not so much what this letter says, but the political consequences of designating these lands as monuments when they're not threatened with losing wilderness status, and they're probably not the areas of the country most in need of this designation. presidents have not used their monument designation authority in this way in the past -- only for large dramatic parcels that are threatened. do we risk a backlash from the bad guys if we do these -- do they have the chance to suggest that this administration could use this authority all the time all over the country, and start to argue that the discretion is too broad?

i'd like get your view, and political affairs, on this. maybe i'm overreacting, but i think we need to consider that issue.

***** ATTACHMENT 1 *****

ATT CREATION TIME/DATE:22-MAR-1996 18:59:00.00

ATT BODYPART TYPE:D

TEXT:

The following attachments were included with this message:

TYPE : FILE
 NAME : PARKPRES

***** END ATTACHMENT 1 *****

***** ATTACHMENT 2 *****

ATT CREATION TIME/DATE:22-MAR-1996 18:59:00.00

ATT BODYPART TYPE:p

ATT SUBJECT: PARKPRES

TEXT:

PRINTER FONT 12_POINT_ROMAN

3/22/96 draft

Dear Secretary Babbitt,

It has come to my attention that there may be public lands in Utah that contain significant historic or scientific areas that may be appropriate for National Monument status under the Antiquities Act of 1906. Therefore, I am requesting any information available to your Department on Utah lands owned or controlled by the United States that contain historic landmarks, historic or prehistoric structures, or other objects of historic or scientific interest.

Please respond as soon as possible. If there are land areas that you have already reviewed and that may be appropriate for immediate consideration, please provide that information separately and as soon as possible.

Thank you for your assistance.

MJC

***** END ATTACHMENT 2 *****

RECORD TYPE: FEDERAL (EXTERNAL MAIL)

CREATOR:MCGINTY_K3A1@CD

CREATION DATE/TIME:25-MAR-1996 13:21:00.00

SUBJECT:RE: redraft of president's babbitt letter and question

TO:T J-Glauthier

(GLAUTHIER_T@A1@CD) (OMB)

READ:26-MAR-1996 23:33:25.62

CC:CN=Linda L. Lance/O=OVP

(CN=Linda L. Lance/O=OVP@OVP@LNGATE@EOPMXX)

READ:NOT READ

CC:JENSEN_T

(JENSEN_T@A1@CD) (CEQ)

READ:NOT READ

CC:BEAR_D

(BEAR_D@A1@CD) (CEQ)

READ:25-MAR-1996 13:25:17.49

CC:CRUTCHFIEL_J

(CRUTCHFIEL_J@A1@CD) (OMB)

READ:25-MAR-1996 13:33:43.47

CC:BEARD_B

(BEARD_B@A1@CD) (OMB)

READ:25-MAR-1996 13:42:49.31

TEXT:

I'm increasingly of the view that we should just drop these Utah ideas. We do not really know how the enviros will react and I do think there is a danger of "abuse" of the withdraw/antiquities authorities especially because these lands are not really endangered.

RECORD TYPE: FEDERAL (ALL-IN-1 MAIL)

CREATOR: Thomas C. Jensen (JENSEN_T) (CEQ)

CREATION DATE/TIME: 27-MAR-1996 13:29:44.93

SUBJECT: POTUS letter re-do

TO: Linda L. Lance
READ: NOT READ

(LANCE_L) Autoforward to: Remote Addressee

TO: T J Glauthier
READ: 27-MAR-1996 14:16:12.50

(GLAUTHIER_T) (OMB)

TO: James Craig Crutchfield
READ: 27-MAR-1996 13:44:04.49

(CRUTCHFIELD_J) (OMB)

TO: Bruce D. Beard
READ: 27-MAR-1996 16:56:11.99

(BEARD_B) (OMB)

TO: Dinah Bear
READ: 27-MAR-1996 14:34:53.38

(BEAR_D) (CEQ)

CC: Kathleen A. McGinty
READ: 27-MAR-1996 17:13:07.59

(MCGINTY_K) (CEQ)

TEXT:

Linda,

Attached is my re-do of the draft potus letter to Babbitt. I've added the reference to Glen Canyon NRA for two reasons: first, because some the lands we're reviewing next to Canyonlands are more proximate to GCNRA. Second, because KM and others may want to rope in the Kaiparowits and Escalante Canyons regions (which are adjacent to GCNRA) if this package ultimately doesn't seem adequate to the President's overall purpose.

Call if you've got any questions.

You're doing a great job.

Tom

***** ATTACHMENT 1 *****
ATT CREATION TIME/DATE: 27-MAR-1996 13:25:00.00

ATT BODYPART TYPE: p

ATT CREATOR: Thomas C. Jensen

TEXT:

PRINTER FONT: i2_POINT_ROMAN

3/27/96 draft

Dear Secretary Babbitt,

It has come to my attention that there may be public lands adjacent to Glen Canyon National Recreation Area, Canyonlands National Park and Arches National Park in Utah that contain significant historic or scientific areas that may be appropriate for protection through National Monument status under the Antiquities Act of 1906. Therefore, I am requesting any information available to your Department on lands owned or controlled by the United States adjacent to Glen Canyon National Recreation Area, Canyonlands National Park or Arches National Park that contain historic landmarks, historic or prehistoric structures, or other objects of historic or scientific interest.

Please respond as soon as possible. If there are land areas that you have already reviewed and that may be appropriate for immediate consideration, please provide that information separately and as soon as possible.

Thank you for your assistance.

WJC

***** END ATTACHMENT 1 *****

RECORD TYPE: FEDERAL (ALL-IN-1 MAIL)

CREATOR: Kathleen A. McGinty (MCGINTY_K) (CEQ)

CREATION DATE/TIME: 27-MAR-1996 15:49:36.19

SUBJECT: pls discuss this with tom

TO: Robert C. Vandermark

(VANDERMARK_R) (CEQ)

READ: 27-MAR-1996 15:55:29.38

TEXT:

rob, i want to see this letter and comment. pls coordinate with tom so we send one set of comments back to linda.

***** ATTACHMENT 1 *****

ATT CREATION TIME/DATE: 27-MAR-1996 12:40:00.00

ATT BODYPART TYPE: E

ATT CREATOR: CN=Linda L. Lance/O=OVP

ATT SUBJECT: another babbitt letter draft

ATT TO: MCGINTY_K

(MCGINTY_K@A1@CD)

ATT TO: JENSEN_T

(JENSEN_T@A1@CD)

ATT TO: BEAR_D

(BEAR_D@A1@CD)

ATT TO: CRUTCHFIEL_J

(CRUTCHFIEL_J@A1@CD)

ATT TO: BEARD_B

(BEARD_B@A1@CD)

ATT TO: GLAUTHIER_T

(GLAUTHIER_T@A1@CD)

TEXT:

Message Creation Date was at 27-MAR-1996 12:40:00

since i and i think others were persuaded at yesterday's meeting w/ interior that we shouldn't write off the canyonlands and arches monuments just yet, here's another try at a draft letter to babbitt to get this process started. if this looks ok, i'd like to run it by justice before it goes out.

tj was going to try to get our offices together to discuss the monuments issue, and we need to do that. but since we're now looking at 4/9 as a possible announcement date, i'd propose getting this letter agreed on and getting a decision memo to the president just on sending the letter to interior. even if we don't ultimately do the monument, it won't hurt to have this letter go out and have interior formally return info to us. we'll never have this ready by 4/9 if a letter doesn't go soon. according to justice, the info justice has seen so far isn't an adequate admin record, so interior will have some work to do.

i'll try to draft a short decision memo to the president on sending this letter (for tj and katie's signature??) so that you all can look at it today. let me know if you have problems w/ this approach, or comments on the letter.

***** END ATTACHMENT 1 *****

***** ATTACHMENT 2 *****
 ATT CREATION TIME/DATE:27-MAR-1996 12:41:00.00

ATT BODYPART TYPE:D

TEXT:

The following attachments were included with this message:

TYPE : FILE
 NAME : PARKPRES

***** END ATTACHMENT 2 *****

***** ATTACHMENT 3 *****
 ATT CREATION TIME/DATE:27-MAR-1996 12:41:00.00

ATT BODYPART TYPE:p

ATT SUBJECT:PARKPRES

TEXT:

PRINTER FONT 12_POINT_ROMAN
 3/27/96 draft

Dear Secretary Babbitt,

It has come to my attention that there may be public lands adjacent to Canyonlands and Arches National Parks in Utah that contain significant historic or scientific areas that may be appropriate for protection through National Monument status under the Antiquities Act of 1906. Therefore, I am requesting any information available to your Department on lands owned or controlled by the United States adjacent to Canyonlands or Arches National Parks that contain historic landmarks, historic or prehistoric structures, or other objects of historic or scientific interest.

Please respond as soon as possible. If there are land areas that you have already reviewed and that may be appropriate for immediate consideration, please provide that information separately and as soon as possible.

Thank you for your assistance.

WJC

***** END ATTACHMENT 3 *****

RECORD TYPE: FEDERAL (EXTERNAL MAIL)

CREATOR:CN=Linda L. Lance/O=OVPOVP@LNGATE@EOPMRX

CREATION DATE/TIME:29-MAR-1996 19:00:00.00

SUBJECT:monday meeting w/ interior and question

TO:JENSEN_T (JENSEN_T@A1@CD) (CEQ)
 READ:NOT READ

TO:MCGINTY_K (MCGINTY_K@A1@CD) (CEQ)
 READ: 2-MAY-1996 09:01:31.47

TO:GLAUTHIER_T (GLAUTHIER_T@A1@CD) (OMB)
 READ:NOT READ

TEXT:

Message Creation Date was at 29-MAR-1996 19:01:00

tom and i agreed that the fastest way to come to closure on remaining monument/utah issues is for he and i to go to interior on monday to meet w/ anne shield, nps folks, and solicitors office. anne has agreed to schedule something for 2 p.m. monday in the secretary's conference room. tom i REALLY hope that works for you, or that you can rearrange to attend. if not, let me know what will work for you on monday p.m.

if katie or tj want to attend and it helps to move it here, we can do that, but i think we need to get with them soon. we'll push them on new wilderness inventory and kaparowitz/escalante.

the question i have for you guys is why does anne react so negatively to the idea of having george frampton there? i told her i'd left a message for him in colorado, and thought he should be at the meeting, and she gave me a lecture about how he wouldn't have the necessary info, hadn't been involved, she had no idea when he'd be back in d.c., we need to have destry there, etc.

is there a reason for me to insist on scheduling this when frampton can be there? does he have a perspective on this that they don't? is there some friction between him and the nps folks that have been involved? let me know. thanks.



COUNCIL ON ENVIRONMENTAL QUALITY
WASHINGTON, D. C. 20503

#10

March 29, 1996

MEMORANDUM FOR THE PRESIDENT

FROM: KATHLEEN A. MCGINTY *K.A. McGinty*

RE: ATTACHED LETTER TO SECRETARY BABBITT IN YOUR SIGNATURE

I. ACTION-FORCING EVENT

As you know, we are putting together a package of national park protection actions for your consideration that, if you approve, may be announced at an event on April 9. As part of that initiative, and in response to the threat to Utah wilderness lands that was posed by the recently-defeated Republican parks bill, we have been reviewing Utah public lands to ensure that we are doing everything possible to provide appropriate protection to those lands. We have focused particularly on public lands that contain historic or scientific resources or are threatened by development.

It has come to my attention that there may be federally-owned lands adjacent to Glen Canyon National Recreation Area, Canyonlands National Park and Arches National Parks in Utah that may warrant protection as national monuments. Statutory authority to issue a proclamation declaring public lands to be national monuments is available only to the President, who cannot delegate such authority.

Case law interpreting this authority has further held that the President can request information from his advisors on the suitability of certain lands for such designation, but that the action must be initiated by the President, not an advisor. For that reason, it is necessary that you formally request Secretary Babbitt to provide you with such information before we can obtain the necessary background to consider such designation on the merits. We need to do that as soon as possible so that this designation can be completed in time for a possible April 9 announcement. The attached letter makes that request.

II. BACKGROUND ANALYSIS

The Antiquities Act of 1906 provides the President with discretionary authority to declare by public proclamation objects of historic or scientific interest that are on lands owned or controlled by the Government to be national monuments. Only an Act of Congress can disestablish a monument.

Reservation as a national monument generally offers protection to the area comparable to that of a National Park, including closure to future mineral leasing claims. The agency managing the monument can grandfather existing uses of the land, such as

grazing permits.

No final decision about the designation of Utah lands as national monuments can be made without additional material from the Department of Interior. However, currently available information indicates that significant Bureau of Land Management acreage adjacent to each of the areas addressed in the letter contains historic and scientific objects of importance, including numerous archeological sites, Indian rock art, geological formations and wildlife habitat.

III. RECOMMENDATION

I recommend that you sign the attached letter requesting information on Utah lands from Secretary Babbitt

IV. DECISION

Approve Approve as amended Reject No action

THE WHITE HOUSE
WASHINGTON

March 29, 1996

The Honorable Bruce Babbitt
Secretary of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Dear Bruce:

It has come to my attention that there may be public lands adjacent to Glen Canyon National Recreation Area, Canyonlands National Park and Arches National Park in Utah that contain significant historic or scientific areas that may be appropriate for protection through National Monument status under the Antiquities Act of 1906. Therefore, I am requesting any information available to your Department on lands owned or controlled by the United States adjacent to Glen Canyon National Recreation Area, Canyonlands National Park or Arches National Park that contain historic landmarks, historic or prehistoric structures, or other objects of historic or scientific interest.

Please respond as soon as possible. If there are land areas that you have already reviewed and that may be appropriate for immediate consideration, please provide that information separately and as soon as possible.

Thank you for your assistance.

Sincerely,

Bill Clinton

RECORD TYPE: FEDERAL (ALL-IN-1 IL)

(4/11)

CREATOR: Kathleen A. McGinty (MCGINTY_K) (CEQ)

CREATION DATE/TIME: 3-APR-1996 18:04:45.13

SUBJECT: parks meeting tomorrow

TO: Linda L. Lance
 READ: NOT READ

(LANCE_L) Autoforward to: Remote Addressee

TO: Thomas C. Jensen
 READ: 4-APR-1996 07:44:49.45

(JENSEN_T) (CEQ)

TO: Lisa Guide
 READ: 3-APR-1996 18:12:01.88

(GUIDE_L) (CEQ)

TEXT:

for the meeting tomorrow at 3, i believe we need a short summary (1-2 pp) of all of the parts of the package. thx. i see this as a major decision-making meeting. on the utah pieces; on the overall package; on potus involvement. by the way leahy said to me today that he thought there was no way they could get info on kaipaiowitz (sp?) and that escalante was a maybe.

(#12)

RECORD TYPE: FEDERAL (ALL .N-1 MAIL)

CREATOR: James Craig Crutchfield (CRUTCHFIEL_) (OMB)

CREATION DATE/TIME: 3-APR-1996 10:09:39.50

SUBJECT: Parks Initiative update

TO: T J Glauthier

READ: 3-APR-1996 10:46:45.89

(GLAUTHIER_T) (OMB)

CC: Ron Cogswell

READ: 3-APR-1996 10:53:22.81

(COGSWELL_R) (OMB)

CC: Bruce B. Beard

READ: 3-APR-1996 11:32:10.72

(BEARD_B) (OMB)

CC: Marvis G. Olfus

READ: 3-APR-1996 10:21:21.90

(OLFUS_M) (OMB)

CC: Linda L. Lance

READ: NOT READ

(LANCE_L) Autoforward to: Remote Addressee

CC: Thomas C. Jensen

READ: 3-APR-1996 10:46:51.77

(JENSEN_T) (CEQ)

TEXT:

PRINTER FONT 12_POINT_ROMAN

According to Linda Lance, the Parks Initiative is not currently on the President's schedule and no event is likely before the President's bid.

-April international trip. May/June is a more realistic timeframe. Interior may not be happy about this out they created a false urgency by citing a pending Gingrich parks proposal. (It now appears that the only imminent Republican proposal is the Senate Omnibus lands bill, which is on hold because of Utah wilderness.)

Other key points:

Sufficiently Presidential? Linda and Tom Jensen met on Monday with Interior to address skepticism from the West Wing about whether the Initiative is worthy of a Presidential event. (Ann Shields grumbled that it would be Presidential if it retained the tax proposals.) They discussed three new candidates for National Monument designation in Utah (Kiparowitz, Grand Gulch, and Escalante), each with pros and cons, and Interior agreed to review these options further. Interior/NPS complained that their park proposal was morphing into a Utah proposal, but Tom and Linda dismiss this complaint.

POTUS letter to Babbitt was sent up for signature on Friday (3/31), but no word from WH Clerk on whether it was signed. By requesting Babbitt to provide information on lands in Utah for possible designation as National Monuments, this letter would establish the needed Administrative record to defend use of the Antiquities Act. The final letter was revised to reference other public lands around Glen Canyon NRA, leaving open the possibility for adding the sites noted above.

[988] From: SAM KALEN 4/25/96 11:42AM (3005 bytes: 49 ln)
 To: JOHN LESHY, DAVE WATTS, ROBERT BAUM c.
 cc: EDWARD COHEN
 Subject: Re: Antiquities Act

C

----- Message Contents -----

As I recall, the advice we have given over the last couple of decades is that, in order to minimize NEPA problems on Antiquities Act work, it is preferable to have a letter from the President to the Secretary asking him for his recommendations. Here are my questions:

1. Is that right? Does it have to be in writing?
2. What is the optimum timing for such a letter - before we start any work?
3. Does the letter have to be public (is it foiable at any time)? Could the President claim executive privilege or is there some other basis for withholding the letter, at least until the Secretary forwards recommendations?
4. Does the letter have to be specific geographically; e.g., "give me recommendations on use of the Act in Oregon" or "on BLM lands in western Oregon" or is "nationwide- anywhere on lands managed by agencies under your jurisdiction" OK?
5. If the President signs a proclamation, and a lawsuit is then brought challenging lack of Secretarial NEPA compliance, could a court set aside the proclamation; i.e., what is the appropriate relief?

Please give me your off-the-top-of-the-head reactions by return e-mail, and keep this close. Thanks.

I don't know what the Dept. has recommended or written in the past, but my recollection (and i will check) is that the issue was raised in connection with Alaska v. Carter and i think the court indicated that EIS not needed when President asks for recommendation. And that case was decided well before more recent NEPA law--e.g., NAFTA case, which further suggests that Secretary's response to President would not be an "action" under NEPA; of course, one could also argue a Douglas County type analogy (status quo exception for designation of monument if NEPA even applied to Executive and thus surely status quo exception for the recommendation on such designation). Additionally, to make it even less like any action under NEPA, the President's request could be for a list of areas in a certain region that DOI already has indicated are WSAs, ACECs, etc. As for FOIA, couldn't we argue deliberative process exception until designation--with harm being that disclosure would prompt nuisance type activities in the area. sam.

RECORD TYPE: FEDERAL (ALL-IN-1 MAIL)

CREATOR: Thomas C. Jensen (JENSEN_T) (CEQ)

CREATION DATE/TIME: 23-JUL-1996 15:30:42.34

SUBJECT: POTUS letter re: Utah

TO: Peter G. Umhofer (UNHOFER_P) (CEQ)

READ: 23-JUL-1996 15:37:10.87

CC: Kathleen A. McGinty (MCGINTY_K) (CEQ)

READ: 23-JUL-1996 18:07:13.21

TEXT:

Peter,

I need your help.

The following text needs to be transformed into a signed POTUS letter ASAP. The letter does not need to be sent, it could be held in an appropriate office (Katie's? Todd Stern's?) but it must be prepared and signed ASAP.

You should discuss the processing of the letter with Katie, given its sensitivity.

Dear Secretary Babbitt,

It has come to my attention that there may be public lands in the general area of Glen Canyon National Recreation Area in Utah that contain significant historic or scientific values that may be appropriate for protection through National Monument status under the Antiquities Act of 1906.

As I stated when I raised this with you in conversation some weeks ago, I would ask that you provide to me any information available to your Department on lands owned or controlled by the United States in the general area of Glen Canyon National Recreation Area in Utah that contain historic landmarks, historic or prehistoric structures, or other objects of historic or scientific interest. Please respond as soon as possible. If there are land areas that you have already reviewed and that may be appropriate for immediate consideration, please provide that information separately and as soon as possible.

Thank you for your assistance.

BC

RECORD TYPE: FEDERAL (ALL-1 MAIL)

CREATOR: Thomas C. Jensen (JENSEN_T) (CEQ)

CREATION DATE/TIME: 25-JUL-1996 11:40:06.21

SUBJECT: Pass of the Utah cover memo

TO: Peter G. Umhofer

(UMHOFFER_P) (CEQ)

READ: 25-JUL-1996 12:04:5-.28

TEXT:

Peter,
Here's a redraft of the POTUS cover memo regarding the POTUS letter to Sabbitt on Utah. I've rewritten it to meet suggestions from Todd Stern. These changes may also address questions that was raised. -
Tom

***** ATTACHMENT 1 *****

ATT CREATION TIME/DATE: 25-JUL-1996 11:38:00.00

ATT BODYPART TYPE: p

ATT CREATOR: Thomas C. Jensen

TEXT:

PRINTER FONT 12_POINT_ROMAN

MEMORANDUM TO THE PRESIDENT

FROM KATIE MCGINTY

SUBJECT ATTACHED LETTER TO SECRETARY BABBITT

We have prepared for your signature the attached letter to Interior Secretary Babbitt. The letter will serve as a critical piece of the administrative record if, as we have discussed, you decide to designate certain lands in southern Utah as national monuments under the Antiquities Act of 1906.

The Antiquities Act provides you with executive authority to set aside federal lands as national monuments in order to protect objects of scientific or historic interest. The authority has been used numerous times in the last ninety years, and served as the basis for creation of many of the Nation's most important protected areas. Many national parks in the West, including most in Utah, were originally set aside under the Antiquities Act. For example, Grand Canyon, Grand Teton, Arches, Capitol Reef, Cedar Breaks, Dinosaur, Natural Bridges, and Zion were originally protected by presidential orders issued under the Antiquities Act.

The purpose of the attached letter is to request from Secretary Babbitt information on federal lands in southern Utah that are suitable for monument designation. The letter serves to engage the Secretary in his role as executive staff to you. Ordinarily, if the Secretary were on his own initiative to send you a recommendation for establishment of a monument, he would most likely be required to comply with NEPA and certain federal land management laws in advance of submitting his recommendation. But, because he is responding to your request for information, he is not required to analyze the information or recommendations under NEPA or the other laws. And, because Presidential actions are not subject to NEPA, you are empowered to establish monuments under the Antiquities Act without NEPA review.

The text of the letter is modeled after the letter sent by

13

President Carter to the Interior Department seeking information on lands in Alaska suitable for monument designation. Based on the department's response and recommendations, President Carter set aside approximately 26 million acres as national monuments. The legality of the President's action was challenged by monument opponents, but was upheld by the federal courts. The letter to Interior was specifically cited by the courts as a principal basis for their finding of legality.

We recommend that you sign the letter. \

***** END ATTACHMENT 1 *****



WASHINGTON, DC 20500

(717)

July 25 1996

MEMORANDUM TO THE PRESIDENT

FROM: KATHLEEN A. MCGINTY *K.A. McGinty*

RE: ATTACHED LETTER TO SECRETARY BABBITT

We have prepared for your signature the attached letter to Secretary of the Interior Bruce Babbitt. The letter will serve as a critical piece of the administrative record if, as we have discussed, you decide to designate certain lands in southern Utah as national monuments under the Antiquities Act of 1906.

The Antiquities Act provides you with executive authority to set aside federal lands as national monuments in order to protect objects of scientific or historic interest. The authority has been used numerous times in the last ninety years, and served as the basis for creation of many of the Nation's most important protected areas. Many national parks in the West, including most in Utah, were originally set aside under the Antiquities Act. For example, Grand Canyon, Grand Teton, Arches, Capitol Reef, Cedar Breaks, Dinosaur, Natural Bridges, and Zion were originally protected by presidential orders issued under the Antiquities Act.

The purpose of the attached letter is to request from Secretary Babbitt information on federal lands in southern Utah that are suitable for monument designation. The lands in question represent a unique combination of archaeological, paleontological, geologic, and biologic resources in a relatively unspoiled natural ecosystem. Three general areas lying to the west of the Colorado River and to the east of Bryce Canyon National Park will be studied: the Grand Staircase, Kaiparowits Plateau, and Escalante Canyon region.

The Grand Staircase spans six major life zones, from lower Sonoran desert to Arctic-Alpine forest, and its outstanding rock formations present some four billion years of geology. The area includes numerous relict plant areas -- rare examples of pristine plant ecosystems that represent the natural vegetative cover that existed in the region before domestic livestock grazing.

The Kaiparowits Plateau includes world class paleontological sites, including the best and most continuous record of Late Cretaceous terrestrial life in the world. The area includes thousands of significant archaeological sites, including the remnants of at least three prehistoric Indian cultures. The Kaiparowits includes the most remote site in the lower 48 states.

The Escalante Canyon region includes some of the most scenic country in the West, significant archaeological resources, unique riparian ecosystems, and numerous historic sites and trails.

These lands were at the heart of the recent legislative battle over Utah wilderness. They are, in sum, much of what the parties were fighting over. Environmentalists value the area for its astonishing beauty, remoteness, and ecological integrity. Development interests want to tap the coal resources of the Kaiparowits Plateau and, through road construction, open new wild areas to commercial use.

The Kaiparowits Plateau lies in the center of the area. Two companies hold leases to mine federal coal there. One company is working with Interior to surrender its Kaiparowits leases in exchange for rights to coal elsewhere in Utah. The other lease holder, a Dutch-owned coal company with plans to ship coal to Asia, has rebuffed Interior's offers to pursue a trade. Coal development on the Kaiparowits would damage the natural, cultural, and historic values of the entire area. Monument designations would not block the proposed coal mine, per se, but would help in a variety of ways to pressure the Dutch company to surrender its leases in exchange for coal elsewhere.

Should you decide, based on the Secretary's recommendations, to designate one or more national monuments in the area, your action will be widely and vigorously supported by national environmental groups and advocates. They will be stunned and delighted by the boldness and scope of the action. There will be significant public support in those areas in which most visitors to southern Utah reside, including California, Colorado, Arizona and the Salt Lake City area. National print media strongly supported the Administration's pro-Utah wilderness stance and can be expected to support monument designations.

Utah's congressional delegation and governor will be angered by the action. CEQ is in consultation with the Counsel's office to identify measures to reduce adverse effects on matters within the control of the Senate Judiciary Committee, chaired by Senator Orrin Hatch (R-UT). Republicans are likely to characterize the action as an aspect of the so-called "War on the West."

The text of the attached letter is modeled after the letter sent by President Carter to the Department of the Interior seeking information on lands in Alaska suitable for monument designation. Based on the department's response and recommendations, President Carter set aside approximately 26 million acres as national monuments. The legality of the President's action was challenged by monument opponents, but was upheld by the federal courts. The letter to Interior was specifically cited by the courts as a principal basis for their finding of legality.

We recommend that you sign the letter seeking information and advice from Secretary Babbitt.

THE WHITE HOUSE
WASHINGTON

July 24, 1996

The Honorable Bruce Babbitt
Secretary of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Dear Bruce:

As I said in conversation with you some weeks ago, it has come to my attention that there may be public lands in the general area of Glen Canyon National Recreation Area in Utah that contain significant historic or scientific values that may be appropriate for protection through National Monument status under the Antiquities Act of 1906.

I would like for you to provide me any information available to your Department on lands owned or controlled by the United States in the general area of Glen Canyon National Recreation Area in Utah that contain historic landmarks, historic or prehistoric structures, or other objects of historic or scientific interest.

Please respond to this request as soon as possible. If there are land areas that you have already reviewed and that may be appropriate for immediate consideration, please provide that information separately and as soon as possible.

Thank you for your assistance.

Sincerely,

RECORD TYPE: FEDERAL (ALL- I MAIL)

CREATOR: Kathleen A. McGinty (MCGINTY_K) (CEQ)

CREATION DATE/TIME: 29-JUL-1996 09:31:39.65

SUBJECT: utah letter

TO: Todd Stern

(STERN_T) (WHO)

READ: 29-JUL-1996 10:41:35.58

TEXT:

wanted to just reiterate what i said about the timliness of the letter because i was worried that, on first iteration, i may have confused you.

the president will do the utah event on aug 17. however, we still need to get the letter signed asap. the reason: under the antiquities act, we need to build a credible record that will withstand legal challenge that: (1) the president asked the secy to look into these lands to see if they are of important scientific, cultural or historic value; (2) the secy undertook that review and presented the results to the president; (3) the president found the review compelling and therefore exercised his authority under the antiquities act. presidential actions under this act have always been challenged. they have never been struck down, however.

so, letter needs to be signed asap so that secy has what looks like a credible amount of time to do his investigation of the matter. we have opened the letter with a sentence that gives us some more room by making clear that the president and babbitt had discussed this some time ago.

many thanks.

August 5, 1996

MEMORANDUM TO MARCIA HALE

FROM: KATHLEEN A. MCGINTY
RE: UTAH EVENT CALLS

Leon Panetta asked that I prepare talking point for you to use in making calls to certain western elected officials regarding the proposed Utah event.

My notes indicate that Leon wanted you to call Governor Roy Romer, Governor Bob Miller, former Governor Mike Sullivan, former Governor Ted Schwinden, Senator Harry Reid, Senator Richard Bryan, and Representative Bill Richardson to test the waters and gather their reactions.

The reactions to these calls, and other factors, will help determine whether the proposed action occur. If a final decision has been made on the event, and any public release of the information would probably foreclose the President's option to proceed.

I would be happy to speak with you about this or provide any additional information you may require. If I am unavailable, Wesley Warren and Tom Jensen of my staff are prepared to assist you.

Attachment

16

August 14, 1986

MEMORANDUM TO THE PRESIDENT

FROM KATIE MCGINTY

SUBJECT PROPOSED UTAH MONUMENT DESIGNATION AND EVENT

Introduction and Background

This memo responds to your request yesterday for additional information on the proposed event at which you would announce designation of certain BLM lands in Utah as a national monument.

In brief, the current proposal is that you should use your authority under the Antiquities Act of 1906 to establish the "Grand Staircase-Escalante National Monument," a new national monument covering approximately 1.7 million acres of federal land in Utah managed by the Interior Department's Bureau of Land Management.

At your direction, the Secretary of the Interior, in cooperation with the Department of Justice, has prepared the analyses and documents that are required to support creation of the proposed new national monument. A draft version of those materials is attached for your information. Final versions should be transmitted to the White House today and should be ready for execution within 24 hours.

Options for Announcement

Three alternate events have been discussed to frame announcement of your action. Some advisors believe that the announcement should take place in a formal Oval Office-type setting, so as to emphasize the presidential character of the action. This course would allow the most scheduling flexibility.

Other advisors recommend that you make the announcement on or near the lands to be covered by the monument designation. The area is very scenic and would offer great, unique visuals, but the country is rough and remote with difficult logistics.

The first attached sheet of photos shows views of or from potential event sites on lands covered by the new monument designation. The landscape is serene, but strikingly beautiful. Because of good air quality, views extend beyond 100 miles. Morning and afternoon light bring out the land's colors best. August weather is hot, probably windy, with a chance of afternoon and evening thunderstorms.

The closest town with an airport capable of handling jet aircraft is Page, Arizona, a small town located on the Arizona-Utah border next to Lake Powell and Glen Canyon Dam. Travel time from the Page airport to the most likely event locations would be roughly 15 minutes by helicopter or 1 hour by four-wheel drive vehicle. The National Park Service maintains significant enforcement and other staff nearby at Glen Canyon National Recreation Area and Grand Canyon National Park and can be called upon with short notice to assist with event logistics. Based on our experience with the proposed "condor release" event (which would have occurred in the same general area), I estimate that an appropriate event could be organized with roughly 48-72 hours lead time. Secretary Babbitt notes that this option would have the most confrontational or "in-your-face" character of the three.

The third option would be to hold the event in Jackson Hole. The logistics and scheduling would be much simpler than the Utah site option and, like the Oval Office option, would not present the same confrontational aspect associated with an event in Utah.

For my part, I believe that any of the three options will adequately serve the purposes underlying establishment of a new monument.

Purpose of the Utah Event

The purpose of the new monument designation would, in general, be to provide additional protection for scenic public lands with high scientific and historical value. More specifically, monument designation would grant the Interior Department additional leverage to forestall a proposed coal mine in the area.

The political purpose of the Utah event is to show distinctly your willingness to use the office of the President to protect the environment. In contrast to the Yellowstone ceremony, this would not be a "feel-good" event. You would not merely be rebuffing someone else's bad idea, you would be placing your own stamp, sending your own message. It is our considered assessment that an action of this type and scale would help to overcome the negative views toward the Administration created by the timber rider. Designation of the new monument would create a compelling reason for persons who are now disaffected to come around and enthusiastically support the Administration.

Establishment of the new monument will be popular nationally in the same way and for the same reasons that other actions to protect parks and public lands are popular. The nationwide editorial attacks on the Utah delegation's efforts to strip wilderness protection from these and other lands is a revealing recent test of public interest in Utah's wild lands. In addition, the new monument will have particular appeal in those areas that contribute most visitation to the parks and public

lands of southern Utah, namely, coastal California, Oregon, and Washington, southern Nevada, the Front Range communities of Colorado, the Taos-Albuquerque corridor, and the Phoenix-Tucson area. This assessment squares with the positive reactions by Sen. Reid, Gov. Roman, and Rep. Richardson when asked their views on the proposal.

Opposition to the designation will come from some of the same parties who have generally opposed the Administration's natural resource and environmental policies and who, in candor, are unlikely to support the Administration under any circumstances. It would draw fire from interests who would characterize it as anti-mining, and heavy-handed Federal interference in the West. Gov. Miller's concern that Nevada's sagebrush rebels would not approve of the new monument is almost certainly correct, and echoes the concerns of other friends, but can be offset by the positive response in other constituencies.

The Grand Staircase-Escalante National Monument

The Antiquities Act provides you with executive authority to set aside federal lands as national monuments in order to protect objects of scientific or historic interest. The authority has been used more than 100 times in the last ninety years, and served as the basis for creation of many of the Nation's most important protected areas. Many national parks in the West, including most in Utah, were originally set aside under the Antiquities Act. For example, Grand Canyon, Grand Teton, Arches, Capitol Reef, Cedar Breaks, Dinosaur, Natural Bridges, and Zion were originally protected by presidential orders issued under the Antiquities Act. Since World War II, every President except Presidents Nixon, Reagan, and Bush have established national monuments.

The attached memorandum from Secretary Babbitt recommends that approximately 1.7 million acres of federal land managed by the Bureau of Land Management in southern Utah be designated as the "Grand Staircase-Escalante National Monument."

The lands in question represent a unique combination of archaeological, paleontological, geologic, and biologic resources in a relatively unspoiled natural ecosystem. Three general areas lying to the west of the Colorado River and to the east of Bryce Canyon National Park would be covered by the new monument: the Grand Staircase, Kaiparowits Plateau, and the Escalante Canyon region.

The Grand Staircase spans six major life zones, from lower Sonoran desert to Arctic-Alpine forest, and its outstanding rock formations present some four billion years of geology. The area includes numerous relict plant areas -- rare examples of pristine plant ecosystems that represent the natural vegetative cover that existed in the region before domestic livestock grazing.

The Kaiparowits Plateau includes world class paleontological sites, including the best and most continuous record of Late Cretaceous terrestrial life in the world. The area includes thousands of significant archaeological sites, including the remnants of at least three prehistoric Indian cultures. The Kaiparowits includes the most remote site in the lower 48 states.

The Escalante Canyon region includes some of the most scenic country in the West, significant archaeological resources, unique riparian ecosystems, and numerous historic sites and trails.

Effects of Monument Designation

There is very little current human use of the area proposed for monument designation and, with the exception of the proposed coal mine discussed below, current and anticipated uses are generally compatible with protection of the area as a monument and would not be affected.

The proposed proclamation would apply to only federal lands. Private and state-owned parcels would be excluded from the monument.

The new monument would be subject to valid existing rights, but would preclude new mining claims in the area.

The proclamation would depart from prior practice and would not reserve federal water rights. This approach on water rights reflects the judgment that an assertion of water rights would invite unnecessary controversy. Some of the objects to be protected by the monument designation do not require water. There is very little water in the area, and what water there is probably has already been claimed under state law. As a part of the study described below, the Secretary will determine whether to seek water rights.

Finally, the proclamation would direct the Secretary of the Interior to prepare a management plan for the area within three years. Although the precise outcome of the three-year planning process cannot be forecast, the Secretary believes that current uses of the area, including grazing, hunting, fishing, off-road vehicle use and similar activities would generally not be affected at current levels or in current areas of use.

The principal substantive effect of the monument designation will be on a proposed coal mine on the Kaiparowits Plateau.

The Kaiparowits Plateau lies in the center of the area that would be covered by the monument designation. Two companies hold leases to mine federal coal there. One company is working with Interior to surrender its Kaiparowits leases in exchange for rights to coal elsewhere in Utah (a situation quite similar to the case of the New World Mine). The other lease holder, Andalex Resources, a Dutch-owned coal company with plans to ship coal to

Asia, has rebuffed Interior's offers to pursue a trade.

Coal development on the Kaiparowits would damage the natural values of the entire area. Monument designations would not block the proposed coal mine, per se, but would help in a variety of ways (described at length in the Secretary's attached memo) to persuade Andalex to surrender its leases in exchange for coal elsewhere.

This step -- reducing or eliminating the risk of coal mining on the Kaiparowits -- would represent an immense victory in the eyes of environmental groups and, based on the editorials written on the subject during the Utah wilderness bill debate, would be widely hailed in the media.

attachments



WASHINGTON, D. C. 20503

(H 11)

August 14, 1996

MEMORANDUM FOR THE PRESIDENT

FROM: KATHLEEN A. MCGINTY

RE: PROPOSED UTAH MONUMENT DESIGNATION AND EVENT

Introduction and Background

This memo responds to your request yesterday for additional information on the proposed event at which you would announce designation of certain Bureau of Land Management (BLM) lands in Utah as a national monument.

In brief, the current proposal is that you should use your authority under the Antiquities Act of 1906 to establish the "Grand Staircase-Escalante National Monument," a new national monument covering approximately 1.7 million acres of federal land in Utah managed by the BLM of the Department of the Interior (DOI).

At your direction, the Secretary of the Interior, in cooperation with the Department of Justice, has prepared the analyses and documents that are required to support creation of the proposed new national monument. A draft version of those materials is attached for your information. Final versions should be transmitted to the White House today and should be ready for execution within 24 hours.

Options for Announcement

Three alternate events have been discussed to frame announcement of your action. Some advisors believe that the announcement should take place in a formal Oval Office-type setting, so as to emphasize the presidential character of the action. This course would allow the most scheduling flexibility.

Other advisors recommend that you make the announcement on or near the lands to be covered by the monument designation. The area is very scenic and would offer great, unique visuals, but the country is rough and remote with difficult logistics.¹

¹ The first attached sheet of photos shows views of or from potential event sites on lands covered by the new monument designation. The landscape is serene, but strikingly beautiful. Because of good air quality, views extend beyond 100 miles. Morning and afternoon light bring out the land's colors best. August weather is hot, probably windy, with a chance of afternoon and evening thunderstorms.

The closest town with an airport capable of handling jet aircraft is Page, Arizona, a small town located on the Arizona-Utah border next to Lake Powell and Glen Canyon Dam. Travel time from the Page airport to the most likely event locations would be roughly 15 minutes by helicopter or 1 hour by four-wheel drive vehicle. The National Park Service maintains significant enforcement and other staff nearby at Glen Canyon National Recreation Area and Grand Canyon National Park and can be called upon with short notice to assist with event logistics. Based on our experience with the proposed "condor release" event (which would have occurred in the same general area), I estimate that an appropriate event could be organized with roughly 48-72 hours lead time. The Secretary of the Interior, Bruce Babbitt, notes that this option would have the most confrontational or "in-your-face" character of the three.

The third option would be to hold the event in Jackson Hole. The logistics and scheduling would be much simpler than the Utah site option and, like the Oval Office option, would not present the same confrontational aspect associated with an event in Utah.

For my part, I believe that any of the three options will adequately serve the purposes underlying establishment of a new monument.

Purpose of the Utah Event

The purpose of the new monument designation would, in general, be to provide additional protection for scenic public lands with high scientific and historical value. More specifically, monument designation would grant DOI additional leverage to forestall a proposed coal mine in the area.

The political purpose of the Utah event is to show distinctly your willingness to use the office of the President to protect the environment. In contrast to the Yellowstone ceremony, this would not be a "feel-good" event. You would not merely be rebuffing someone else's bad idea, you would be placing your own stamp, sending your own message. It is our considered assessment that an action of this type and scale would help to overcome the negative views toward the Administration created by the timber rider. Designation of the new monument would create a compelling reason for persons who are now disaffected to come around and enthusiastically support the Administration.

Establishment of the new monument will be popular nationally in the same way and for the same reasons that other actions to protect parks and public lands are popular. The nationwide editorial attacks on the Utah delegation's efforts to strip wilderness protection from these and other lands is a revealing recent test of public interest in Utah's wild lands. In addition, the new monument will have particular appeal in those areas that contribute most visitation to the parks and public lands of southern Utah, namely, coastal California, Oregon, and Washington, southern Nevada, the Front Range communities of Colorado, the Taos-Albuquerque corridor, and the Phoenix-Tucson area. This assessment squares with the positive reactions by Senator Harry Reid (D-NV), Governor Roy Romer (D-CO), and Representative Bill Richardson (D-NM) when asked their views on the proposal.

Opposition to the designation will come from some of the same people who have generally opposed the Administration's natural resource and environmental policies and who, in candor, are unlikely to support the Administration under any circumstances. It would draw fire from interests who would characterize it as anti-mining, and heavy-handed Federal interference in the West. Governor Bob Miller's (D-NV) concern that Nevada's sagebrush rebels would not approve of the new monument is almost certainly correct, and echoes the concerns of other friends, but can be offset by the positive response in other constituencies.

The Grand Staircase-Escalante National Monument

The Antiquities Act provides you with executive authority to set aside federal lands as national monuments in order to protect objects of scientific or historic interest. The authority has been used more than 100 times in the last ninety years, and served as the basis for creation of many of the Nation's most important protected areas. Many national parks in the West, including most in Utah, were originally set aside under the Antiquities Act. For example, Grand Canyon, Grand Teton, Arches, Capitol Reef, Cedar Breaks, Dinosaur, Natural Bridges, and Zion were originally protected by presidential orders issued under the Antiquities Act. Since World War II, every President except Presidents Nixon, Reagan, and Bush have established national monuments.

The attached memorandum from Secretary Babbitt recommends that approximately 1.7 million acres of federal land managed by the BLM in southern Utah be designated as the "Grand Staircase-Escalante National Monument."

The lands in question represent a unique combination of archaeological, paleontological, geologic, and biologic resources in a relatively unspoiled natural ecosystem. Three general areas lying to the west of the Colorado River and to the east of Bryce Canyon National Park would be covered by the new monument: the Grand Staircase, Kaiparowits Plateau, and the Escalante Canyon region.

The Grand Staircase spans six major life zones, from lower Sonoran desert to Arctic-Alpine forest, and its outstanding rock formations present some four billion years of geology. The area includes numerous relict plant areas -- rare examples of pristine plant ecosystems that represent the natural vegetative cover that existed in the region before domestic livestock grazing.

The Kaiparowits Plateau includes world class paleontological sites, including the best and most continuous record of Late Cretaceous terrestrial life in the world. The area includes thousands of significant archaeological sites, including the remnants of at least three prehistoric Indian cultures. The Kaiparowits includes the most remote site in the lower 48 states.

The Escalante Canyon region includes some of the most scenic country in the West, significant archaeological resources, unique riparian ecosystems, and numerous historic sites and trails.

Effects of Monument Designation

There is very little current human use of the area proposed for monument designation and, with the exception of the proposed coal mine discussed below, current and anticipated uses are generally compatible with protection of the area as a monument and would not be affected.

The proposed proclamation would apply to only federal lands. Private and state-owned parcels would be excluded from the monument.

The new monument would be subject to valid existing rights, but would preclude new mining claims in the area.

The proclamation would depart from prior practice and would not reserve federal water rights. This approach on water rights reflects the judgment that an assertion of water rights would invite unnecessary controversy. Some of the objects to be protected by the monument designation do not require water. There is very little water in the area, and what water there is probably has already been claimed under state law. As a part of the study described below, the Secretary will determine whether to seek water rights.

Finally, the proclamation would direct the Secretary of the Interior to prepare a management plan for the area within three years. Although the precise outcome of the three-year planning process cannot be forecast, the Secretary believes that current uses of the area, including grazing, hunting, fishing, off-road vehicle use and similar activities would generally not be affected at current levels or in current areas of use.

The principal substantive effect of the monument designation will be on a proposed coal mine on the Kaiparowits Plateau.

The Kaiparowits Plateau lies in the center of the area that would be covered by the monument designation. Two companies hold leases to mine federal coal there. One company is working with DOI to surrender its Kaiparowits leases in exchange for rights to coal elsewhere in Utah (a situation quite similar to the case of the New World Mine). The other lease holder, Andalex Resources, a Dutch-owned coal company with plans to ship coal to Asia, has rebuffed DOI's offers to pursue a trade.

Coal development on the Kaiparowits would damage the natural values of the entire area. Monument designations would not block the proposed coal mine, per se, but would help in a variety of ways (described at length in the Secretary's attached memo) to persuade Andalex to surrender its leases in exchange for coal elsewhere.

This step -- reducing or eliminating the risk of coal mining on the Kaiparowits -- would represent an immense victory in the eyes of environmental groups and, based on the

editorials written on the subject during the Utah wilderness bill deb. , would be widely hailed in the media.

Attachments

RECORD TYPE: FEDERAL (ALL-IN . MAIL)

CREATOR: Kathleen A. McGinty (MCGINTY_KAI) (CEQ)

CREATION DATE/TIME: 23-AUG-1996 16:29:34.89

SUBJECT: utah--weekly report

TO: Peter G. Umhofer (\UMHOFER_P) (CEQ)

READ: 23-AUG-1996 16:29:57.46

CC: Thomas C. Jensen (JENSEN_T) (CEQ)

READ: 26-AUG-1996 08:35:33.40

TEXT:

As you know, a draft national monument declaration has been prepared for your review by the Department of Interior. Per your request, the Department studied the area and found it incredibly rich archeologically (anassasi ruins) and ecologically (unique and pristine natural resources); already in Federal ownership, and therefore, suitable for monument designation under the Antiquities act. In addition, Interior also reports that currently, a foreign coal company called Andalax Resources is pushing to open a coal mine in the heart of the area. While a monument designation is not capable of stopping the mine (all existing property rights and uses would be held harmless), it would make it more difficult for the mining company to secure approval of their request for a 22 mile road that they would propose to run across federal land, again in the heart of this area. In this regard, the situation is very similar to where we were last year on Yellowstone--mine proposed; mine requesting use of federal land. Under these circumstances last year, you exercised authority to withdraw surrounding land from mining activity. Like the monument designation here, that action did not stop the Yellowstone mine, but it did erect significant barriers to it.

It was originally proposed that you would announce the monument during your vacation. Work was pushed to meet that deadline. I am very concerned now that, since we did not move forward at that time, but significant work was done, news of this will leak out. I strongly recommend that we move forward with this initiative. Others are concerned that it will ignite a "War on the West" backlash, and indeed, the Utah delegation -- including Bill Orton -- will be displeased to say the least. However, the attached editorial from the Salt Lake Tribune decries Dole's "Whine on the West", and in many other places in the west (CO, CA, WA, OR, NM) this would be extremely well received. In any event, we need to decide this soon, or I fear, press leaks will decide it for us.

19



EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
WASHINGTON, D.C. 20503

August 23, 1996

96 AUG 23

P-7:49

9-3-96

Shel

MEMORANDUM FOR THE PRESIDENT

FROM: KATHLEEN A. MCGINTY *in KM*

cc: McGinty
Orton

CC: LEON PANETTA

RE: CEQ WEEKLY REPORT

UTAH

As you know, a draft national monument declaration has been prepared for your review by the Department of the Interior (DOI). Per your request, DOI studied the area and found it incredibly rich archaeologically (Anasazi ruins) and ecologically (unique and pristine natural resources). Because the area is already in Federal ownership, it is therefore suitable for monument designation under the Antiquities Act.

DOI also reports that a foreign coal company called Andalex Resources currently is pushing to open a coal mine in the heart of the area. While a monument designation is not capable of stopping the mine (all existing property rights and uses would be held harmless), it would make it more difficult for the mining company to secure approval of their request for a 20 mile road that they would propose to run across federal land, again in the heart of this area. In this regard, the situation is very similar to where we were last year on Yellowstone — a proposed mine requesting use of federal land. Under these circumstances last year, you exercised authority to withdraw surrounding land from mining activity. That action did not stop the Yellowstone mine, but it did erect significant barriers to it as would the monument designation here.

Agree
Shel

It was originally proposed that you would announce the monument during your vacation. Work was pushed to meet that deadline. I am very concerned now that, since we did not move forward at that time, but significant work was done, news of this will leak out. I strongly recommend that we move forward with this initiative. Others are concerned that it will ignite a "War on the West" backlash, and indeed, the Utah delegation — including Congressman Bill Orton (D-UT) — will be displeased to say the least. However, the attack editorial from the Salt Lake Tribune decries Dole's "Whine on the West", and I believe that in many other places in the west (CO, CA, WA, OR, NM) this initiative would be extremely well received.

In any event, we need to decide this soon, or I fear, press leaks will decide it for us.

EXECUTIVE OFFICE OF THE PRESIDENT

06-Sep-1994 03:13pm

TO: [redacted]

TO: Elisabeth Blang

TO: Thomas J. Jensen

TO: Brian J. Johnson

FROM: Kathleen A. McBinty
Council on Environmental Quality

SUBJECT: wkly report graphs

utah

we learned late today that the washington post is going to run a

story this week d reporting that the admi stration is considering a national monument designation. i unders nd that there are no quotes in the story, so it is based only on "the word about town." i have called several members of congress to give them notice of this story and am working with political affairs to determine if there are democratic candidates we should alert. we are neither confirming nor denying the story, just making sure that democrats are not surprised.

meanwhile, we are working with don baer and others to scope out sites and dates that might work for an announcement on this issue.



EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
WASHINGTON, D.C. 20503

#22

September 6, 1996

MEMORANDUM FOR THE PRESIDENT

FROM: KATHLEEN A. MCGINTY *Kathleen A. McGinty*
CC: LEON PANETTA
RE: CEQ WEEKLY REPORT

UTAH

We learned late today that the Washington Post is going to run a story this weekend reporting that the Administration is considering a national monument designation. I have called several members of Congress to give them notice of this story and am working with Office of Political Affairs to determine if there are Democratic candidates we should alert. We are neither confirming nor denying the story; just making sure that Democrats are not surprised. This could lead the Utah delegation to try efforts such as a rider on the Interior Appropriations bill next week to prevent you from taking any such action.

Meanwhile, we are working with Don Baer and others to scope out sites and dates that might work for an announcement on this issue.

CREATOR: Brian J. Johnson (JOHNSON_BJ) (CEQ)

CREATION DATE/TIME: 10-SEP-1996 17:07:20.19

SUBJECT: f**k-all, get a load of this from Kenworthy

TO: Thomas C. Jensen (JENSEN_T) (CEQ)

READ: 10-SEP-1996 17:08:30.43

TO: Kathleen A. McGinty (MCGINTY_KA1) (CEQ)

READ: 10-SEP-1996 17:20:09.42

TO: Wesley P. Warren (WARREN_W) (CEQ)

READ: 13-SEP-1996 13:48:29.75

TO: Shelley N. Fidler (FIDLER_S) (CEQ)

READ: 10-SEP-1996 17:08:40.30

TEXT:

===== ATTACHMENT 1 =====

ATT CREATION TIME/DATE: 10-SEP-1996 14:36:00.00

ATT BODYPART TYPE: E

ATT CREATOR: Kenworthy, Tom

ATT SUBJECT: utah, again

ATT TO: 'smtp:johnson_bj@a1.eop.gov' (johnson_bj@a1@CD)

T :

Brian:

So when pressed by Mark Udall and Maggie Fox on the Utah monument at yesterday's private ceremony for Mo, Clinton said: "You don't know when to take yes for an answer." Sounds to me like it's going forward. I also hear Romer is pushing the president to announce it when he's in Colorado on Wednesday. Give me a heads up if its imminent--I can't write another story saying it's likely to happen, but it would be nice to know when it's going to happen for planning purposes.

--Tom Kenworthy

kenworthy@washpost.com

ps--thanks for the packet

===== END ATTACHMENT 1 =====

===== ATTACHMENT 2 =====

ATT CREATION TIME/DATE: 10-SEP-1996 17:01:00.00

ATT BODYPART TYPE: D

TEXT:

RFC-822-headers:

Received: from conversion.pmdf.eop.gov by PMDF.EOP.GOV (PMDF V5.0-4 #6879)

Id <01I9BKJXAGG000FSJ@PMDF.EOP.GOV> for johnson_bj@a1.eop.gov; Tue,

10 Sep 1996 17:00:05 -0400 (EDT)

Received: from storm.eop.gov (storm.eop.gov)

PMDF.EOP.GOV (PMDF V5.0-4 #6879) Id <01I9BKHGT160000JP9@PMDF.EOP.GOV> for

RECORD TYPE: FEDERAL (ALL-IN-1 MAIL)

Document 104

CREATOR:Shelley N. Fidler (FIDLER_S) (CEQ)

CREATION DATE/TIME:10-SEP-1996 17:09:13.8

SUBJECT:RE: f**k-all, get a load of this from Kenworthy

TO:Brian J. Johnson (JOHNSON_BJ) (CEQ)

READ:10-SEP-1996 17:29:06.20

CC:Thomas C. Jensen (JENSEN_T) (CEQ)

READ:10-SEP-1996 17:10:32.32

CC:Kathleen A. McGinty (MCGINTY_KAI) (CEQ)

READ:10-SEP-1996 17:40:49.26

CC:Wesley P. Warren (WARREN_W) (CEQ)

READ:13-SEP-1996 13:49:06.57

TEXT:

why didn't he write about MO that would have been useful and nice
and well deserved. what a creep.

. Johnson_bj@a1.eop.gov; Tue, 10 Sep 1996 17:00:01 -0400 (EDT)
Received: from uu5.psi.com by STORM.EOP.GOV (PMDF V5.0-7 #6879)
id <01I9BKEXXHC00007Y@STORM.EOP.GOV> for johnson_bj@a1.eop.gov; Tue,
10 Sep 1996 16:57:59 -0700 (MST)
Received: from uul190.UUCP by uu5.psi.com (5.65b/4.0.071791-PSI/PSINet)
via UUCP; id AA22377 for johnson_bj@a1.eop.gov; Tue, 10 Sep 1996 16:59:49 -0400
R ived: from smtpgate.washpost.com by uucpgate.washpost.com id aa21647; Tue,
10 Sep 1996 13:31 -0400 (EDT)
Received: by smtpgate.washpost.com with Microsoft Mail id
<3235D3B3@smtpgate.washpost.com>; Tue, 10 Sep 1996 13:46:43 -0700 (PDT)
-----, END ATTACHMENT 2 -----

SECRET

Document 103

CREATOR: Thomas C. Jensen (JENSEN_T) (CEQ)

CREATION DATE/TIME: 10-SEP-1996 17:09:24.95

SUBJECT: RE: f**k-all, get a load of this from Kenworthy

TO: Brian J. Johnson (JOHNSON_BJ) (CEQ)

READ: 10-SEP-1996 17:29:14.44

CC: Kathleen A. McGinty (MCGINTY_KA1) (CEQ)

READ: 10-SEP-1996 17:41:05.08

CC: Wexley P. Warren (WARREN_W) (CEQ)

READ: 13-SEP-1996 13:49:17.88

CC: Shelley N. Fidler (FIDLER_S) (CEQ)

READ: 10-SEP-1996 17:13:23.80

TEXT:

Wow. He's got good sources and a lot of nerve.

RECORD TYPE: FEDERAL (EXTERNAL MAIL)

CREATOR:kenworthy@washpost.com@INET@EOPMRX

Document 106

CREATION DATE/TIME:11-SEP-1996 22:22:00.00

SUBJECT:utah

TO:'johnson_bj@a1.eop.gov'

(johnson_bj@a1@CD) (CEQ)

READ:11-SEP-1996 22:22:49.99

TEXT:

south rim of the grand canyon, sept 18th--be there or be square

ATTACHMENT 1

ATT CREATION TIME/DATE:11-SEP-1996 22:22:00.00

ATT BODYPART TYPE:D

TEXT:

RFC-822-headers:

Received: from conversion.pmdf.eop.gov by PMDF.EOP.GOV (PMDF V5.0-4 #6879)
id <01I9DA17JF9C0003BX@PMDF.EOP.GOV> for johnson_bj@a1.eop.gov; Wed,
11 Sep 1996 22:22:14 -0400 (EDT)

Received: from storm.eop.gov (storm.eop.gov)
by PMDF.EOP.GOV (PMDF V5.0-4 #6879) id <01I9DA16OR000003C4@PMDF.EOP.GOV> for
johnson_bj@a1.eop.gov; Wed, 11 Sep 1996 22:22:08 -0400 (EDT)

Received: from uu5.psi.com by STORM.EOP.GOV (PMDF V5.0-7 #6879)
id <01I9D9XICT9I00007Y@STORM.EOP.GOV> for johnson_bj@a1.eop.gov; Wed,
11 Sep 1996 22:20:10 -0700 (MST)

Received: from uu1190.UUCP by uu5.psi.com (5.65b/4.0.071791-PSI/PSINet)
via UUCP; id AA11618 for johnson_bj@a1.eop.gov; Wed, 11 Sep 1996 22:21:40 -0400
Received: from smtpgate.washpost.com by uucpgate.washpost.com id aa06282; Wed,
11 Sep 1996 18:57 -0400 (EDT)

Received: by smtpgate.washpost.com with Microsoft Mail id
<32377243@smtpgate.washpost.com>; Wed, 11 Sep 1996 19:15:31 -0700 (PDT)

END ATTACHMENT 1



EXECUTIVE OFFICE OF THE PRESIDENT
 COUNCIL ON ENVIRONMENTAL QUALITY
 WASHINGTON, D.C. 20503

23

September 16, 1996

MEMORANDUM TO THE PRESIDENT

FROM: KATHLEEN A. MOONEY

SUBJECT: UTAH MONUMENT PROCLAMATION

The Secretary of the Interior prepared the attached materials in response to your request to him for information on federal lands in southern Utah that should be granted national monument protection under the Antiquities Act.

In brief, the Secretary proposes that you use your authority under the Antiquities Act to establish by proclamation the "Grand Staircase-Escalante National Monument." The monument would cover approximately 1.7 million acres of federal land in south central Utah managed by the Interior Department's Bureau of Land Management (BLM).

National and Utah environmental groups have pressed Congress to designate approximately 5.7 million acres of BLM land in Utah as "wilderness areas," a potentially more restrictive land use category than "national monument" status. The proposed Grand Staircase-Escalante National Monument would be welcomed by the environmental groups as a tremendous step toward protecting the areas they care most about, including the areas facing the greatest development threat from proposed coal mining. They will, however, continue to press their case for the much more stringent and larger wilderness designations.

The proposed national monument includes approximately 400,000 acres of BLM lands that environmental advocates want to see protected, but that have not been proposed for formal wilderness protection because the areas contain features that render them legally ineligible for wilderness status. The lands are essentially the interstices between large blocks of wilderness-eligible lands. They contain resources that qualify for monument status, as described in the Secretary's memo to you.

Since news of the proposed monument leaked to the Los Angeles Times and Washington Post last week, we have received strong endorsements for this proposal from many quarters, including national and western newspapers, Democratic Senate and House candidates in Montana, Idaho, and Colorado, western Democratic Senators and House Members, key authorizing and appropriating committee members, western governors, and numerous environmental and conservation groups. The Utah delegation, including Democratic Congressman Bill Orton, Governor Leavitt, and the NRA have spoken out in strong opposition.

In this regard, much of the opposition from Utah has been premised on concern over the monument's possible impact on school revenues. We have compiled a considerable body of information on this issue. Based on CEQ, OMB, and Interior Department analysis of reports

prepared by various State of Utah agencies, it appears that the proposed Andalex/Smoky Hollow Mine would generate less than \$75,000 per year for Utah school expenses. Utah's annual education budget is approximately \$1.6 billion. The criticism based on "lost" school income appears to be wildly overstated.

Secretary Babbitt anticipated the level and type of opposition we have now heard directly. The Secretary has proposed that, in establishing the monument, you take several steps to reduce short- and long-term opposition from Utah's pro-development interests and rural residents. First, he proposes that BLM, rather than the National Park Service, manage the monument. Second, he proposes that you expressly disclaim any reservation of federal water rights for the monument. Third, the Secretary has proposed monument boundaries that exclude all developed areas and state park lands. Fourth, the Secretary has proposed that the new management regime for the monument area be defined through a multi-year public hearing and involvement process.

White House and Interior Department representatives have met or conversed extensively over the past week with members of the Utah delegation and the Governor's office. Based on those communications, we recommend that the monument proclamation disclaim any effect on management of grazing, hunting, or fishing activities. In other words, those activities would be governed by current law, notwithstanding the monument designation.

In addition, we recommend that you direct the Secretary to pursue negotiations with the State of Utah to trade state-owned parcels within the boundaries of the monument for federal lands of equal value elsewhere in Utah, thus ensuring that the state interests are protected. This direction would come in the form of a separate memo to the Secretary, not in the proclamation.

The draft proclamation submitted by the Secretary has been amended to reflect the hunting/fishing/grazing point described in the preceding paragraph.

enclosures

RECORD TYPE: FEDERAL (EXTERNAL MAIL)

CREATOR:kenworthy@washpost.com@INET@EOPMRX

CREATION DATE/TIME:16-SEP-1996 12:30:00.00

SUBJECT:utah

TO:'johnson_bj@a1.eop.gov'

(johnson_bj@a1@CD) (CEQ)

READ:16-SEP-1996 12:32:39.09

TEXT:

Nice touch doing the Escalante Canyons announcement on the birthday of Utah's junior senator! Give me a call if you get a chance.

***** ATTACHMENT 1 *****

ATT CREATION TIME/DATE:16-SEP-1996 12:32:00.00

ATT BODYPART TYPE:D

TEXT:

RFC-822-headers:

Received: from conversion.pmdf.eop.gov by PMDF.EOP.GOV (PMDF V5.0-4 #6879) id <01I9JOTFJ2LS000X62@PMDF.EOP.GOV> for johnson_bj@a1.eop.gov; Mon, 16 Sep 1996 12:30:53 -0400 (EDT)

Received: from storm.eop.gov (storm.eop.gov) by PMDF.EOP.GOV (PMDF V5.0-4 #6879) id <01I9JOT4X0R40012LZ@PMDF.EOP.GOV> for johnson_bj@a1.eop.gov; Mon, 16 Sep 1996 12:30:18 -0400 (EDT)

Received: from uu5.psi.com by STORM.EOP.GOV (PMDF V5.0-7 #6879) id <01I9J0QHJWXI00007Y@STORM.EOP.GOV> for johnson_bj@a1.eop.gov; Mon, 16 Sep 1996 12:28:12 -0700 (MST)

Received: from uu1190.UUCP by uu5.psi.com (5.65b/4.0.071791-PSI/PSINet)

via UUCP; id AA23275 for johnson_bj@a1.eop.gov; Mon, 16 Sep 1996 12:29:57 -0400 Received: from smtpgate.washpost.com by uucpgate.washpost.com id/ab21053; Mon, 16 Sep 1996 11:28 -0400 (EDT)

Received: by smtpgate.washpost.com with Microsoft Mail id <323DA12D@smtpgate.washpost.com>; Mon, 16 Sep 1996 11:49:17 -0700 (PDT)

***** END ATTACHMENT 1 *****



THE SECRETARY OF THE INTERIOR
WASHINGTON

September 13, 1996

Honorable Robert F. Bennett
United States Senate
Washington D.C. 20510-4403

Dear Senator Bennett:

I am responding to your letter I received yesterday regarding the proposal to create a new national monument in southern Utah. While no final decision on establishing a monument has been made, your letter nonetheless raises valid concerns, and I do believe they merit full discussion.

You ask, first, whether the proposed monument would carry with it a reserved water right, and if so, what effect it might have on water users, the Colorado River Compact, and various proposed water development projects. These are questions of very legitimate concern, and I look forward to discussing them further with you, Congressman Orton, Governor Leavitt, and other interested parties.

Your second group of questions involves the effect of establishment of a national monument on state lands within its boundaries. We certainly share your concern that the state public school system not be impaired by establishment of a national monument. As you know, the issue of how to deal with state inholdings scattered across federal lands managed to protect nationally significant values is a common problem throughout the west. Many national parks, national forests, national monuments, and other protected federal areas contain state inholdings. The most common way to address these is for the state and the federal government to agree upon an exchange, whereby the state agrees to trade its inholding in return for public lands of equal value outside the protected area. I look forward to discussing this further with you.

Your final set of questions involves the status of existing mineral leases and rights in the area under consideration as a national monument. The only mineral interests of any significance I am aware of in the area are existing federal coal leases issued many years ago. Most of these leases have expired of their own terms, or been relinquished, or are in the process of being cancelled pursuant to law. Two leases or lease groups remain. One is held by Pacificorp, and we are currently in very serious discussions with that company to relinquish its lease on the Kaiparowits Plateau in exchange for bidding credits on federal coal of equal value elsewhere.

Handwritten:
Sent

The remaining lease interest is held by Andalex Resources, Inc. This company has applied for a number of permits or other authorizations required by federal and state law in order to open a mine on the Kaiparowits Plateau. A draft environmental impact statement is currently being prepared on the proposal. Should a national monument be established, and should the company continue to seek permission to move forward with its proposal, a determination would have to be made whether the Andalex proposal is inconsistent with the purposes of the monument, and if so, whether and to what extent the company has valid existing rights that would have to be addressed.

I appreciate the opportunity I've had to discuss these issues with you, with Congressman Orton, and with Governor Leavitt. I look forward to further discussions in the very near future.

Sincerely,

A handwritten signature in black ink, appearing to read "Ben Bohn". The signature is written in a cursive, somewhat stylized script. Below the signature is a small, empty circle.

ISBN 0-16-056341-0



9 780160 563416



90000